FORENSIC NARRATIVES IN ATHENIAN COURTS

Edited by
Mike Edwards and Dimos Spatharas

Forensic Narratives in Athenian Courts

Forensic Narratives in Athenian Courts breaks new ground by exploring different aspects of storytelling in Athenian forensic speeches and the ways in which forensic narratives reflect normative concerns and legal issues.

The chapters, written by distinguished experts in Athenian oratory and society, explore the importance of narratives for the arguments of relatively under-discussed orators such as Isaeus and Apollodorus. They employ new methods to investigate issues such as speeches' deceptiveness or the appraisals which constitute the emotion scripts that speakers put together. This volume not only addresses a gap in the field of Athenian oratory, but also encourages comparative approaches to forensic narratives and fiction, and fresh investigations of the implications of forensic storytelling for other literary genres.

Forensic Narratives in Athenian Courts will be an invaluable resource to students and researchers of Athenian oratory and their legal system, as well as those working on Greek society and literature more broadly.

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Preface

This volume arose from a Celtic Conference in Classics panel on forensic narratives. The panel, co-organized by the present volume's editors, was held in June 2016 at Dublin. The quality of the papers read at the event, and the collegial and stimulating discussion among the panel's members urged us to ask speakers to revise their papers and submit them for publication. In spite of the fact that narratives have attracted due scholarly attention by scholars who work on fictional literary genres, forensic narratives remain an under-researched topic. Legal theorists and viewers of popular courtroom dramas know that stories play an integral role in courtroom practice. Forensic stories are characterized by several idiosyncratic qualities. For example, the competing versions of the legally significant events that forensic stories offer typically anticipate their final meaning from the very outset of the speech. But still, the ways in which speakers manipulate their narrative material attract our full attention because they allow us to look into real peoples' lives. Forensic stories, thus, no doubt highly fabricated versions of the events which gave rise to individual legal disputes, engage us in ways which are both similar and dissimilar to the ways in which other literary narratives engage us.

The editors of this volume have accrued a number of debts during its production. We want to extend our warmest thanks to our contributors. Without their patience and collegial spirit this volume would not have materialized. We also want to thank the organizers of the 2016 Celtic Conference in Classics for their hospitality and for giving us the opportunity to put this fascinating panel together. We are also indebted to the staff at Routledge, especially Michael Greenwood and Elizabeth Risch. We hope the outcome justifies their encouragement and forbearance. Good things come to those who wait.

Mike Edwards
Dimos Spatharas

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Introduction

Dimos Spatharas

Some 30 years ago, courtroom storytelling attracted the attention of a number of scholars who ascribed themselves to a movement known as 'law and literature'.[1] The emphasis placed by 'law and literature' scholars on narratives is programmatic.[2] Because stories are a medium of signification shared by humans, a medium that enables us to put together and convey our experience in a meaningful manner, narrative scholarship in the field of legal theory emphasizes that stories can serve as a vehicle of social integration. Stories provide what Scheppele (1989) labels a 'wide angle' of legal cases and therefore offer individuals who are involved in legal disputes the opportunity to account for their legally significant actions by personalizing and contextualizing them. Succinctly, storytelling is the antidote to the technicalities of abstruse professional legal discourse.[3] Yet, not all legal theorists would endorse the approaches of their colleagues who emphasize the importance of narratives for forensic deliberation. This is mainly due to the fact that the enforcement of the law is understood as a rigidly logical process which relies on the analysis of evidence. In the Athenian courts, however, storytelling plays a predominant role.[4] As is known, Athenian courts decided cases solely on the basis of litigants' speeches rather than on the basis of the evidence presented to them during the trial and the examination of witnesses, as is the case with modern courtroom practice. In the next paragraphs, I offer some observations concerning the place of storytelling in Athenian trials.

The fact that Athenian litigants delivered uninterrupted or relatively uninterrupted speeches (Noboru Sato discusses forensic storytelling and *thorubos* in this volume), which in many cases were written in advance, enabled them to construct cohesive narratives and manipulate the material that they saw fit to include in their stories. In his discussion of the narrativity of modern opening statements in American courts of law, Robert Burns points out (1999: 50) that opening statements present to the juror 'what the evidence will *show*, not what the evidence will *be* … the opening has an 'argument', but it is like the argument of a novel, deriving from all the sources of plausibility that pure narratives can have'. Ancient forensic narratives also appeal to 'all the sources of plausibility', mainly

by offering jurors a conceptual framework in which they invite them to decide the case. But where modern opening statements are brief narratives followed by the presentation of evidence in a rather fragmented fashion, ancient courtroom stories are extensive narratives which in some cases cover the full length of a speech (the contributions of Apostolakis and Fisher focus on Apollodorus' unusually long narratives). Furthermore, if, as Burns suggests (1999: 50), opening statements are 'a battle about what kind of "social ordering" the situation demands', the lengthy forensic stories that we find in the corpus of the orators – and the stories within the stories – unequivocally revolve around social norms, political concerns, or litigants' public conduct. Because Athenian courts took the social background of a trial and citizens' public behaviour to be relevant to their deliberation (on this issue, see the essays of Plastow and Griffith-Williams), speakers constructed stories or embarked on long digressions which reflected major social concerns and wider cultural understandings rather than just legally significant questions revolving around factual or circumstantial evidence.

In *Against Neaira*, for example, Apollodorus provides the jurors with a highly biased story centring on the genealogy and debauchery of three courtesans and comprising a lengthy digression on the Plataeans by way of establishing that a possible acquittal of Neaira would result in the corrosion of the polis' social order. The salient social contextualization that ancient litigants seek to achieve through storytelling may be explained by the tendency of ancient courts to rely for their decisions on what Lanni (2009) describes as 'extra-statutory' norms. It would hardly be possible for a modern litigant to recite the sheer volume of narrative poetry that Aeschines recites in *Against Timarchus* in order to contrast his opponent's life with the prevalent values that decent citizens have internalized through their common *paideia.* And no modern lawyer would have the time or be allowed to use as many apparently irrelevant mini-narratives (concerning incidents of violent attacks which took place in the past), as Demosthenes does in *Against Meidias* so as to indicate the social meaning of *hybris*. Notably, in this speech Demosthenes does not go into detail about the incident of violence during the City Dionysia for which he took legal action against Meidias. Just like any forensic story, the competing stories told by ancient litigants predictably invested with radically different meaning a single action of legal significance, but the stories heard at Athenian trials also contextualized individual cases by emphasizing wider public concerns and social norms.

Another aspect which may explain the prominence of storytelling in ancient courtroom practice is directly relevant to the programmatic scope of modern legal theorists who emphasize the importance of narratives as a mechanism of social integration. Unlike modern courts, in which the dispensation of justice is regulated by professionals, ancient courts were manned by non-professional jurors who were thought to represent the polis as a whole. Hence, the tendency of ancient forensic speakers to contextualize their disputes through storytelling may also reflect their need to smooth out the legal or other technical complications of their cases and present jurors with simple yet often misleading questions. Furthermore,

in view of the fact that relevant or irrelevant laws were frequently used as arguments, rather than as prescriptions against which jurors measured the evidence presented to them, storytelling enabled speakers to appeal to audiences' social knowledge or cultural understandings. In the speeches that they deliver, Athenian litigants commonly appeal to constructed traditions about the social meaning of their legal system through stories that reflect highly biased readings of their past. Hence, forensic narratives about the law 'historicize' the legal system in such a way as to project on it key aspects of the polis' identity and thereby function in an assertive fashion. In this respect, stories about the 'law' are comparable with stories about the glorious past of the polis. Psilakis' contribution analyzes Demosthenes' stories about Solon the lawgiver, a figure which seems to incarnate the distinctive characteristics of the polis' identity.

The notion that the law 'lives on narrative' (to use Amsterdam and Bruner's locution, 2000: 110) is particularly relevant to several aspects of the legal system of classical Athens. At the preliminary hearing (*anakrisis*) in front of the appropriate *archōn*, litigants would produce evidence which substantiated their stories about the major events of their cases. In this phase, the stories that they told in the presence of the appropriate magistrate would include the nucleus of the elaborate narratives that we commonly find in the extant speeches. Indeed, litigants' anticipation of their opponents' arguments would rely both on the evidence produced during the *anakrisis* and the stories through which they conveyed their own version about the dispute. As is always the case with forensic narratives, in so far as litigants' accounts revolved around a relevant legal prescription, their stories would convey competing versions of the events – as would also be the case in private or public arbitrations. Unlike other types of stories, the competing stories told by litigants elicit unequivocal, albeit diametrically opposed, meanings and, as I suggested, commonly anticipate their final meaning at their outset. Note for example that the very first word of *Against Conon* is the participle *hybristheis*, a word that encapsulates the main argument of the much admired *diēgēsis* of the speech. Notably, in his story, the young prosecutor, a certain Ariston, attempts to show that the act of violence that he suffered was commensurate with *hybris* rather than a playful fight between youths (on forensic storytelling and deception in this and other speeches, see Kremmydas' essay).

Storytelling would also have been prominent in logographers' preliminary meetings with their clients. Because it is notoriously stupid to lie to your lawyer and because forensic narratives are highly elaborate fabrications – post factum, verisimilar reconstructions of individual cases' 'events' – during their meetings with their clients ancient logographers would have wanted to know the main contours of their cases (Gagarin's essay in this volume usefully discusses the intersections between stories and the law). *When*, *where*, *why* and *how* are important questions. Lysias 1 offers a good example. In this speech, Lysias' client suggests that he killed Eratosthenes lawfully, because he caught him having sex with his wife in his own house. Eratosthenes' family will have claimed that Euphiletus entrapped Eratosthenes in order to kill him. Lysias' admirable narrative therefore

deals with a difficult factual issue: that Eratosthenes' dead body was found on the ground level of Euphiletus' house during the night (on Euphiletus' story, see Webb's and Wohl's essays in this volume). The fact that Lysias omits a specific reference to the actual killing of the victim – even as carefully selected details about Euphiletus' daily life abound in the speech and contribute to personal characterization – is indicative of the story that Euphiletus told Lysias when he asked him to compose the speech.

Discussion of a methodological issue, however, is necessary here. In recent years, the study of narrativity has become an independent subfield in Classics. The theoretical tool through which ancient 'narratives' have typically been dissected by scholars is narratology, especially structural narratology, which promised classicists a systematic analytical metalanguage for the study of ancient narratives. The outcome of scholarly enthusiasm with structural narratology was that specific genres, such as the ancient novel, are now identified with 'narrative'. Note, for example, that a prestigious periodical accommodating excellent publications on the ancient novel is titled *Ancient Narrative.* Although structuralism enabled classicists to analyze ancient 'stories' more cohesively, in some cases the use of structural narratology resulted in mechanistic applications of the 'theory'. Objections to the mechanistic use of structural narratology for the analysis of ancient narratives have been voiced by scholars who are more adept at formalist narratological analyses than the editors of this volume.[5] The most important of these objections is that structural narratological approaches are unhistorical.[6] In other words, because the analytical tools that structural narratology offers are determined by the phenomenon that they seek to analyze, that is, the modern novel, rather than, say, performed ancient narratives,[7] narratological approaches to ancient literature require modifications. Balzac's realistic novels differ significantly from texts such as Pindar's odes or, indeed, forensic speeches, which are scripts of performances to which modern classicists have no access.[8] This volume eschews narratological formalism, even as it pays due attention to ancient critical approaches to *diēgēsis*.

In this volume, the word narrative(s) is commonly used to describe any kind of verbal storytelling rather than just speeches' 'narratives' (*diēgēseis*) conveniently distinguished by ancient rhetoricians from the 'proofs' (*pisteis* – but Hatzilambrou's essay usefully focuses on ancient rhetoricians' assessments of *diēgēsis*). Even a cursory reading of the orators indicates that stories of varying length are commonly dispersed over different parts of the speeches or that the 'proofs' are conveniently interwoven with storytelling. Different stories refashion the same events in different ways. One of the most important characteristics of forensic narratives, which, as I pointed out, differentiates them from other types of narratives, is that they revolve around legal questions and predictably offer competing versions of the same events. This volume emphasizes the literary tropes of forensic narratives rather than the imprints of forensic storytelling in fictional literary genres, for example, the *agōnes logōn* in tragedy or characters' delivery of elaborate orations in the novel. A comparative discussion emphasizing

forensic storytelling *in* literature would fruitfully help us look into not only how 'non-fictional' forensic storytelling intersects with other literary genres, but also the ways in which forensic stories are determined by the narrative techniques of literature. I sense that such an approach would duly emphasize the place of ancient logographers/orators in a culture dominated by narratives (as the use of poetry in speeches by Aeschines, Demosthenes and Lycurgus indicates), in so far as the elaborate stories that they constructed were addressed to large audiences whose civic identity and indeed their *paideia* was shaped by archetypical stories. Furthermore, the orators' narratives also function assertively in so far as the law is the realm of normativity *par excellence*. Hence, forensic stories appeal to shared cultural and social understandings from which they gain persuasiveness.[9] A comparison of forensic storytelling with literary narratives would also usefully reveal ancient understandings of 'fictionality': in his cryptic discussion of *enargeia,* for example, Ps.-Longinus (15.2) draws a clear line of distinction between 'fictional' poetry, whose aim is to 'strike' audiences, and oratory which seeks to achieve verisimilitude.[10] In both poetry and rhetoric, however, vivid narratives' main function is to arouse audiences' emotions (*pathētikon* and *sugkekinēmenon*).

In the rest of this introduction, I address the relationship between (vivid) narratives and emotions. The study of emotions, whose pivotal role is recurrently acknowledged both in ancient and modern systematic analyses of rhetoric, is particularly relevant to forensic narratives. In recent years, the history of emotions has become a subfield of classics, while our approaches to ancient emotions have been enhanced by the findings of experimental and cognitive psychologists, neuroscientists and philosophers. That emotions play an integral role in the persuasive potentialities of forensic or other types of narrative can be gleaned from ancient treatments of *enargeia*.[11] Ancient theorists agree that good narratives activate mental images eliciting responses which are no different from the responses prompted by what we take in through our sensory experience.[12] Hence, when they insist that vivid narratives bring before listeners' (or readers') eyes the world of the narrated material, ancient theorists suggest that the mental images elicited by stories yield emotional responses, thereby making audiences believe that they actively participate in the narrated events.[13] The emphasis that ancient theorists place on the emotive power of narratives invites our attention, in so far as recent debates about the place of emotions in the dispensation of justice are tightly linked to discussions about the implications of narratives for courtroom practice.

The intersection between emotions and narratives is salient in the stories told by victims' relatives and friends in murder cases heard in some American jurisdictions. These narratives, read out at the sentencing phase, are known as Victim Impact Statements (VISs). As is evident, the stories included in these statements provide rich emotion scripts, emphasizing how the crime affected their narrators' lives. Even a cursory reading of VISs indicates that the emotion that prevails in relatives' and friends' accounts is empathy: victims invite jurors to get a grasp of their suffering through their vivid and highly personalized stories, which in the case of punishment for death revolve around emotional responses to loss.

The appropriateness of VISs has been disputed by legal theorists and philosophers on various grounds, but the main argument against them concerns the nature of the emotions aroused by the stories told by survivors of criminal activity.[14]

As I mentioned earlier, VISs involve emotion scripts. According to Douglas Cairns (2008: 46), an emotion script is 'a mini-narrative that will usually encompass (at least) the conditions in which emotion X occurs, the perceptions and appraisals of those conditions, and the responses (whether symptomatic, expressive or pragmatic) that result'. By focusing on the phenomenology of emotion X, its cognitive structure and the actions that it leads to, emotion scripts offer a holistic approach to an emotion episode. By turning their attention to emotion scripts rather than emotion labels (e.g., *phthonos* or *eleos*), students of ancient emotions can gain a better understanding of literary representations of ancient *pathē*.[15] It is particularly significant for our discussion, however, to note that emotion scripts have a narrative background or indeed are mini-narratives which provide contextualized information about the occurrence of individual emotion episodes. Because emotions are a cognitive phenomenon rather than irrational jolts, we typically convey our emotional experience through stories, an indispensable cognitive tool in our social transactions. To return to my example, on account of their narrativity VISs are rich, albeit carefully constructed, emotion scripts which not only convey victims' emotional experience, but also invite jurors' emotional responses by engaging them in stories appealing to common daily experiences.

In her admirable book on ancient *ekphrasis* (2009), Ruth Webb shows that ancient discussions about visual narratives, what Greeks labelled *enargeia*, emphasize the importance of mental images for the manipulation of the audience's sentiments. Indeed, as early as Gorgias, ancient rhetoricians problematize the representational power of *logos.* Because forensic speeches provide verisimilar accounts of incidents to which the jurors were not present, ancient rhetoricians sometimes identify truth with *erga*, while *logos* ('speech') is identified with *doxa*, that is, ungrounded beliefs.[16] The intricacies of the limitations of speech as a means through which one can (re-)present factual reality are also pivotal to the epistemology of arguments from probability, arguments which, as the word *eikota* shows, produce likenesses of truth. Verisimilar *logos* is indistinguishable from factual truth partly on account of the visual qualities of narratives and the mobilization of listeners' *phantasia*. Note, for example, that for Gorgias speeches make the 'eye of belief' behold invisible things, thereby eliciting emotional responses. For Aristotle, visual *logoi* prompt the emotional responses which are characteristic of tragedy. Indeed, in the extant tragedies the most significant events, the raw material of fast-paced Hollywood movies, are recounted in messengers' speeches, narratives which ancient rhetoricians frequently associate with *enargeia.* Researchers in the field of neuroscience assert that our response to visual narratives, for example, when we read a novel, are different in degree but not in kind from the way that we respond to what we see in our daily interaction with others.[17]

The power of narratives to evoke mental images and thereby elicit emotional responses invites us to address some significant methodological questions

concerning the affective aspects of ancient forensic storytelling. As we saw, narratives are indispensable to the expression of our sentiments, because stories are vehicles of signification. But is there a lesson to be learned from the comparison of ancient forensic narratives with my example of VISs? It is true that in some cases of prosecution speeches ancient narratives refer to the personal harm sustained by the victim. But unlike the case with VISs, which emphasize the crime's impact upon individuals' personal lives, ancient narratives contextualize the consequences of illegal action by thematizing wider cultural or social concerns. Although this generalization may require modification on the basis of several considerations, such as the nature of individual cases and the cognitions which determine individual effects, emotion scripts in ancient forensic stories usually place the crime in the wider context of social and public concerns. Lene Rubinstein (2004), for example, has shown – albeit on the basis of the labels 'anger' and 'hatred' rather than on relevant emotion scripts – that speakers appeal to the emotion of anger only in public cases or in private cases where the crime is presented as affecting the polis as a whole. This finding is particularly useful because it reveals the importance of the appraisals that speakers invite jurors to make through their stories. If Rubinstein is right, anger is exclusive to public cases because in these cases jurors, just like volunteer prosecutors who are not personally harmed by the crime, are thought to be slighted by the defendant.

The emphasis that ancient forensic stories place on the wider social context of individual cases is particularly pertinent to speakers' attempts to manipulate their audiences' sentiments. Because emotions require appraisals, audiences' psychological manipulation, or what traditional scholarship sometimes unreflectively describes as 'appeal to emotion', is the art of constructing emotion scripts by deploying social cognitions that give rise to individual sentiments. The study of emotions and their narrative background, therefore, is part and parcel of our approach to the values that shaped the public discourse of Athenian courts. Furthermore, as Ruth Webb points out, ancient discussions of *enargeia* stress that the verisimilarity and, correlatively, the persuasiveness of narratives depend on stories' relevance to shared values (2009: 95–6, 102–3). More importantly, the appeal to shared values or potent cultural understandings secures the uniformity of audiences' emotional responses. Viewed in the light of modern approaches to emotion, this uniformity may be explained on the understanding of emotions as a cognitive phenomenon: the predictability of a collective subject's response to a story requires that its members' appraisals are informed by their shared cultural knowledge.

In Lysias' first speech, for example, the defendant assumes the argumentative tone of a prosecutor. Through his speech, Euphiletus seeks to show that Eratosthenes' relationship with his wife was commensurate with *hybris* and thereby convince the jurors that his killing of the adulterer was a service to the city. Thus, his rhetoric, is carefully designed to anticipate his opponent's arguments about his true motives, appeals to assumptions concerning an Athenian husband's honour and anxieties, thereby inducing jurors to direct their anger at

the victim. Compare this situation with the verdict of a Baltimore County Circuit Court judge in which 'the defendant found his wife in bed with another man at midnight, chased the man away, drank and argued with his wife until four a.m., and then fatally shot her in the head with a hunting rifle'. The judge sentenced the defendant to 18 months in prison for voluntary manslaughter, saying 'I seriously wonder how many men married five, four years would have the strength to walk away without inflicting some corporal punishment'.[18] The situation is not factually or culturally identical with Euphiletus' killing. But both the Baltimore judge's verdict and Euphiletus' case require a 'narrative glue':[19] they both put together incidents in a meaningful story which centres on male honour.

Our contributors discuss several aspects of forensic storytelling, even as the volume omits discussion of the narrative techniques of important orators such as Aeschines or Lycurgus. Yet, the fact that several chapters treat the speeches of orators who are relatively under-explored, such as Isaeus and Apollodorus, whose rhetoric relies heavily on storytelling, perhaps compensates for these omissions. The editors of the present collection of essays would also be interested in thematic approaches which are not included in the volume. For example, orators' modes of narrativizing the polis' past or the 'historical' digressions that they deploy in support of arguments defining the polis' identity should invite due scholarly attention in the future. Despite these omissions, however, we hope that this volume will stimulate fresh systematic discussions of the undeservedly under-explored stories which ancient litigants deployed in support of their cases.

Notes

1 For an assessment of the movement's contributions, see Brooks (2011). The movement has its own periodical (https://www.tandfonline.com/toc/rlal20/current, consulted on January 18, 2019). For a convenient introduction to the interface between legal discourse and narratology, see Greta Olson at http://www.lhn.uni-hamburg.de (consulted on January 20, 2019).
2 See, for example, Scheppele's seminal paper (1989).
3 This topic is examined by several contributors in Brooks-Gewirtz (1996).
4 Recent discussions of forensic narratives in classical Athens include the pioneering paper of Gagarin (2003); see also Edwards (2004a, 2004b, 2004c, 2004d, 2004e, 2004f); Spatharas (2009, on Apollodorus' *Against Neaira*, with a general overview of narratives' implications for the law); Kapparis (2017, on Apollodorus).
5 See Scodel's critical remarks in her introduction to a volume on Greek narrative (2014). Notably, the volume omits discussion of storytelling in the orators.
6 See Scodel (2014: 5–6) with further literature.
7 On the limitations of structural narratology as a means of analyzing performed narratives, see Bakker (2009).
8 On forensic speeches as performances, see the Introduction to Papaioannou, Serafim and da Vela (2017) and O'Connell (2017).
9 On normativity and law's appeal to archetypical stories, see Cover's inspiring essay (1983) emphasizing the importance of narratives for the law.
10 For a detailed discussion of Ps.-Longinus' treatment of *enargeia* in poetry and the orators, see Webb (2009: 101–2).
11 See, for example, Webb's excellent discussion (1997).

12 For a thorough treatment of the interfaces between vision and mental images in ancient thought and literature, see Blundell et al. (2003).
13 For a recent discussion of mental images in forensic oratory, see O'Connell (2017: chapters 5–6) and Spatharas (2017).
14 See, for example, Gewirtz (1996).
15 Kaster (2005: 8–11) was the first to use 'emotion scripts' in the study of ancient literature and culture; Sanders (2014: 5–7) offers a critical approach to the employment of 'emotion scripts' in the history of ancient sentiments.
16 On the representational potentialities of speech (*logos*) in Gorgias, see Spatharas (2008). For a general discussion of the ways in which *enargeia* intersects with ancient views about the representational power of speech, see Eden (1986: 72–3, 91–2).
17 On this topic, see Blundell et al. (2003: with further literature at 34, nn. 19–20).
18 For a discussion of this case and the implications of gendered understandings of emotions for the law, see Kahan and Nussbaum (1996: 346–7).
19 I borrow the term from Brooks (2002: 3) – his essay offers a useful introduction to pivotal aspects of the relationship between narratives and the law.

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Chapter 1

Storytelling in Athenian law[1]

Michael Gagarin

Storytelling and law. What's the connection? Is there a connection? Modern legal theory has traditionally restricted the role of storytelling in legal arguments on the grounds that legal argument ought to be based on the facts as derived from evidence and on the laws as rationally interpreted to fit those facts. Storytelling would generally not support the sort of objective, rational process required for forensic pleading; instead it is much more likely to distract the pleader and his audience, judge or jury, from their proper task, which is an objective assessment of the evidence and the law. And yet, storytelling is in many ways essential to legal argument.

This is most obvious in forensic narratives, but almost all other aspects of the law also depend on storytelling. This is because law, for the most part, deals with actual life and people, not with the abstract subjects of most legal rules. 'If someone kills someone, he shall die' may suggest a story but it doesn't tell one. But change the sentence to 'if Dimos here killed someone, he shall die', and you immediately need a story. The prosecutor will tell a story, maybe several stories, about what Dimos did. Dimos will tell different stories. Other stories may be told to prove or disprove a motive. Still other stories may be required about what will happen if Dimos is convicted or acquitted. And more stories will be needed to argue against points raised by either side.

My point is that when we think of storytelling in forensic pleading, we naturally think of the narrative; but in fact stories are told throughout the proofs and in every other part of a speech as well. We also tend to think of storytelling as a way of establishing the facts of a case (see Gagarin, 2003); but stories are also told in order to establish points of law (see below). In fact, as we shall see, in an effective speech like Lysias 1, stories that establish the facts of the case and stories that establish the law in the case will work together in support of the speaker's overall argument.

Litigation in classical Athens normally consisted of one speech by each litigant; sometimes each gave a second, shorter rebuttal speech. The first speeches normally included stories about past events, and these stories almost always differed. One common way in which the stories differed is connected with what is perhaps the most basic fact about a story, succinctly stated by Aristotle in his

discussion of the tragic plot: 'Tragedy is the imitation of an action that is complete and whole and has magnitude. … And a whole is something that has a beginning and middle and end'.[2] When I first read this statement as an undergraduate, I remember thinking that it was pretty obvious; of course, stories have a beginning, middle and end. Only later did I come to realize that Aristotle's point is quite profound, that one of the most important things about a story is where it begins and where it ends. And when stories about an event differ, this is often the reason why. Think of two children. 'He hit me'. 'She hit me first'. 'But he called me a bad name'. 'Well, she wouldn't let me play with her toy'. And so on. This is a trivial example, but it illustrates the importance of the starting point.

Like this one, many disputes, perhaps most disputes, have a long history, so that the number of potential starting points is virtually unlimited. Territorial disputes, for example, such as those concerning Native American tribal lands in the US, the Crimea, Israel and Palestine, or islands in the South China Sea, go back centuries. Each side will have developed its own history about the territory, and these stories will almost always differ with regard to their starting point, as well as many other details. Thus, each side tells a different story by beginning at a different time.

We often categorize stories as either truthful or false. This distinction is misleading. Certainly, some stories intentionally falsify events or intentionally mislead, but all stories present events from a certain perspective and that perspective shapes both the content of the story and the way that content is presented. All stories are partial accounts of events; not only did the participants experience the events in different ways, but in recounting the events they include some of the things that they experienced but omit others. Thus, if my story about an event differs from yours, as it will more often than not, this does not necessarily mean one of us is lying or intentionally being deceptive. We are each telling our own story, and it is quite possible that each of our stories is true from our own perspectives.

Most litigation in Athens conforms to these general observations. One example that I have examined before (Gagarin, 2003) is Lysias 1, *On the Murder of Eratosthenes*.[3] Many critics have observed that in Lysias 1, although Euphiletus is the defendant in a homicide case and is claiming that his act was lawful, the story he tells is not so much a defence of himself against a charge of homicide as a prosecutor's story about crime and punishment. It begins with a peaceful home that is then violated by the adulterer Eratosthenes, who is later punished as the law requires, thereby restoring peace in the home; end of story. Nothing more needs to be done.

The prosecution certainly told a different story, and almost certainly began at a different point, probably somewhat later in the marriage. Euphiletus' wife, they may have argued, had become disenchanted with her husband on account of his philandering; she thus enticed Eratosthenes into her home. When Euphiletus found out, he set a trap with the maid's assistance to catch Eratosthenes in the act and murder him. Eratosthenes offered to pay a ransom, which was the normal procedure in such cases,[4] but Euphiletus refused the offer, being determined to commit murder. His crime was intentional and planned. The story will only end

when Euphiletus is justly punished, as the law requires. In short, the case almost certainly featured two different stories about the same events, each with a different beginning and end point, and a very different message for the jury.

There are many other examples where litigants tell stories with different beginning points, but I will give just one more, from the trial *On the Crown* (Aeschin. 3; Dem. 18). Ctesiphon's decree had praised Demosthenes' public career 'on the ground that he always spoke and did what was best for the *dēmos*'.[5] Aeschines then indicted the decree on several grounds including the allegation that Ctesiphon's praise was false. To prove this, in his prosecution speech he surveys Demosthenes' public career to show that he never spoke and acted in the best interests of the *dēmos*. After a long *paraleipsis* in which he recites a list of events that he will not mention in which Demosthenes acted badly (3.51–4), he begins his survey where he claims Demosthenes will begin, with the period from the war with Philip over Amphipolis, which began in 357, to the Peace of Philocrates in 346.

Because the Peace of Philocrates soon came to be regarded as disastrous for Athens, however, Demosthenes pretends that this event took place before his public career began. Thus, even though the peace was negotiated by a group of Athenian envoys that included Demosthenes, he begins his account of his public career with events in the mid-340s, just after the peace of Philocrates:

> The places Philip captured and held before I entered politics and began to speak to the people, I pass over, since I think none of these concern me. But the places he was prevented from taking from the day I turned my attention to these matters, these I will discuss and present an account of.[6]

Obviously, by beginning at a later point, Demosthenes can tell a much more positive story about his actions regarding Philip than Aeschines does.

These examples and many others I could give are of stories told in the narrative as a means of establishing facts. But since this function of storytelling in forensic pleading is relatively well known, I would like to turn to two other, less often discussed functions, first (briefly) storytelling as a means of establishing the proofs, and then storytelling as a means of establishing law.

For storytelling in the proofs, consider Lysias 32, *Against Diogeiton*. The speech, preserved only by Dionysius of Halicarnassus,[7] breaks off, either at or near the end of the proofs section (32.19–29). Most of the proofs in this section are straightforward: the speaker simply tells the jurors how much Diogeiton entered in his account book for various items and leaves it up to them to conclude that the sum is much too large or is otherwise inappropriate. The jurors would easily be able to draw this conclusion because they would be familiar with the costs of most of the items mentioned – things like food and clothing. But the last item in the proofs section, the expenses for a trierarchy that Diogeiton had shared with a certain Alexis, would have been unfamiliar to most, if not all, of the jurors, who would never have had the means to pay for a trierarchy.[8] So for this expense Lysias uses a different strategy.

He first gives the total expenditure Diogeiton entered for the trierarchy, 48 minas, half of which he charged to the children's account even though they were exempt from this expenditure by law (32.24). Then he tells a story, which will demonstrate how Diogeiton plundered the estate with regard to this particular expenditure (32.26–7): after first getting Diogeiton to provide the speaker with his accounts of the joint trierarchy, he tells how he then went to Alexis' brother (Alexis having died in the meanwhile) and asked if he had Alexis' accounts for the trierarchy. He said that he did and so they went to his house and found the account book. This revealed that the trierarchy had actually cost Diogeiton only half of what he recorded in his account book – 24 minas. 'As a result', the speaker concludes, 'his entire expenditure has been charged to these children'.[9] The story concludes with a rhetorical question:

> what do you think Diogeiton has done in cases where he alone incurred the expense and no one else knew about it if, when he was acting jointly with another and could therefore more easily be discovered, he had the audacity to tell lies and deprive his daughter's children of 24 minas?[10]

Lysias tells a fairly short story here, but he could easily have replaced it with a simple statement of the amounts entered in the account books of each joint trierarch. By casting it as a slightly suspenseful story about a clever discovery, however, he creates a more vivid impression and makes the conclusion more memorable. Regardless of what Diogeiton says in response, when the time comes to render their verdict, the jury is likely to remember this small incident of blatant fraudulent accounting and accept it as an indication of pervasive fraud in Diogeiton's accounts.

A similar reason probably accounts for a story told in Demosthenes 55, *Against Callicles*. The speaker has been accused by Callicles of causing significant damage to his property by building a wall to divert water. In order to show the falsity of this accusation, the speaker recounts that his mother visited Callicles' mother shortly after the alleged flooding occurred, and Callicles' mother told her what had happened and showed her the damage caused by the water, which was minimal. This is how he learned all the facts. According to his mother, who (he says) is willing to swear an oath, the amount of barley that had gotten wet and was drying was not as much as three *medimnoi* and about half a *medimnos* of wheat flour. Also, a jar of olives had spilled but was not damaged. And for this, Callicles was asking a thousand drachmas for damages!

Here too, the speaker could have simply listed the items that were damaged and then argued that they were not worth nearly what Callicles was claiming, but telling a story not only makes these facts much more vivid but also demonstrates to the audience that, as neighbours, the two families were otherwise on good terms with one another. This lends support to the conclusion that Callicles' act of bringing a fraudulent suit violated the normal behaviour of neighbours and is thus even more despicable.

These are just two of the many stories told in the proofs sections of forensic speeches. They resemble the stories told in the narrative portions of speeches, but whereas it is impossible to present a narrative without a story, proofs often are presented without stories. The same is true of the third use of storytelling in the forensic speeches, storytelling as a means of establishing law. In an earlier paper on this subject (Gagarin, 2014) I focused on Lysias 1, arguing that the two speakers in this case, in addition to telling very different stories about what happened, would have presented different stories about the meaning of the law or laws on adultery as well as about the applicability of the adultery and homicide laws to this case.

More specifically, I suggested that in the speech that survives, Euphiletus argues that the law requires death as the punishment for adultery so that he was simply acting as an agent of the law. He says nothing about the law against homicide, implying that it is not relevant to the case. As part of his argument about the adultery laws, moreover, he tells a story about the lawgiver, a type of story that is very common in forensic speeches when the speaker is discussing the meaning of a law. The lawgiver, he says, assigned the death penalty for adultery because he reasoned that adultery was a worse crime than rape because, unlike rape, adultery corrupts the victim's soul and destroys the entire household. The prosecution would surely have told a different story about the law. They would certainly have cited the law prescribing death for homicide and would have related how Euphiletus entrapped Eratosthenes in direct violation of the law and then brutally murdered him in cold blood. We cannot know just how they presented their arguments but it is very likely that part of their case relied on telling stories about the law, probably ones involving the lawgiver.

After hearing both sides, the jury would have had to decide between the two versions of the law as well as two versions of the facts of the case. Actually, these were both part of one single decision, decided in the one and only vote the jurors cast, and we can see in Euphiletus' presentation (and probably in the prosecution's story as well) that his story about the facts is constructed in such a way as to fit neatly with his story about the law and vice versa. As we saw, Euphiletus' story about the facts related how Eratosthenes had destroyed a perfectly harmonious household by seducing his innocent wife, which exactly reflects the lawgiver's thinking when he prescribed the death penalty for adultery.

Stories about the law are also told in many other cases. One of the longest and most elaborate is the story told by Aeschines at the beginning of his prosecution of Timarchus (Aeschin. 1.6–35). Aeschines first recounts in summary fashion how Draco and Solon were concerned about decency and self-restraint, and so they enacted laws beginning with laws for the decency of children, how children should be raised and how they should live, and then proceeding to the decency of young men, and then to the other adult age groups in turn, laws for both private citizens and public speakers (1.6–7). He then presents a detailed account of the laws the legislator enacted for the decency of each age group, citing specific texts for many of them and often explaining the legislator's reasons for including

specific provisions. Sometimes he adds an explanation of the fairness of a certain provision (1.8–20). This leads to a discussion of the laws pertaining to speaking in the assembly, which is the central issue in this case; again, the discussion is cast in the form of a story about the legislator and his reasons for including various provisions in this law (1.21–32). Finally, he ends with the story of a recent law enacted as a supplement to these more ancient ones (1.33–5).

The first thing to note about this story (or series of stories) is that, like Euphiletus' story about the lawgiver, it has no basis in fact. Not only could no one in the fourth century know these early legislators' thinking, but as far as we can tell, the laws mentioned were not enacted in the order Aeschines posits, they were not enacted by just one or two lawmakers, and they were not part of any overall plan such as he describes. Why then does Aeschines tell this story? He could surely have discussed all these laws, explaining the effects of various provisions and praising their excellence, without casting his discussion in the form of a story about the legislator. But the effect would have been different. By incorporating all the laws except the last one into the story of a single legislator's creation, Aeschines implies that Athens has a unified set of laws with a single, rational purpose, to create a standard of behaviour for Athenian citizens of all ages, a standard that Timarchus has consistently violated. In this way, every instance of bad behaviour that Aeschines will bring up against Timarchus can be presented as one more violation of the total set of norms enacted to regulate the behaviour of decent Athenian citizens.[11]

Another, rather similar story but with a different twist is told about the laws at the beginning of the speech Hyperides wrote in defence of Euxenippus, who has been impeached by the procedure of *eisangelia* (Hyp. *Eux*. 1–9). Here the focus is on the meaning and application of the law on impeachment, but Hyperides' story is similar to Aeschines' in presenting the enactment of a number of different laws as a single rational act. In this case, however, the legislator is not Solon but the Athenian people, who by a common legal fiction are identified with the jury in the present case.

Hyperides begins by citing several examples of public figures who were impeached in the past for significant public actions detrimental to the city (1–2). He then cites three recent cases of impeachment for fairly trivial actions that at most affected the city only very indirectly, including the present defendant Euxenippus, who has been impeached because of a dream he had (3). None of these recent cases, he argues, had anything to do with the law on impeachment. Hyperides then rejects the prosecution's claim that one should not hold fast to the letter of the impeachment law, insisting to the contrary that cases should be brought to trial in strict accordance with the laws; that is why 'you' he says (referring to the jury as if it were the Athenian *dēmos*), you have enacted laws to cover each crime (4–6). He then turns to the impeachment law and asks, 'for what crimes do you think an impeachment should be brought? You have already written down each one in the law, so that everyone will know'.[12]

He then (7–9) quotes a number of provisions in the law that specify the offences covered, noting that some of them (such as subverting the democracy) apply to

anyone, whereas others (such as giving bad advice) apply only to the politicians (*rhētores*). And he emphasizes these two parts of the law (what applies to anyone and what applies to politicians) by adding at the end, 'You would have been crazy to write this law in any other way and to have made private citizens run the same risks when they do not derive the honour and the benefits from public speaking that the politicians do'.[13]

As in Aeschines' speech, Hyperides could have said essentially the same thing about these laws in impersonal terms – 'there are laws covering this and that, or the impeachment law says such and such'. Although at first glance, one might not see much difference between the two forms of expression, the personal form, which essentially tells a story about the jury members as legislators, invites the audience to experience the impeachment law as the result of a rational process that they themselves were engaged in. Bringing the audience into this story effectively forces them to agree that the specific provisions of the impeachment law were those that they themselves intentionally included when they wrote the law, so that they must agree that the details are important and should be closely adhered to. And the story ends with a very personal observation, that 'you' (the jurors, as if they were the *dēmos*) 'would have been crazy' to write the law differently. Obviously, the jurors would want to agree that they were not crazy in writing the law as they did. In this way, the story impresses upon the jury the importance of the law's details and of taking these into account in judging the case.

The story in Antiphon 5, *On the Murder of Herodes*, is different in that it tells how and why the prosecutors violated the law by using the wrong legal procedure. After a preface, in which the defendant, a young Mytilenean named Euxitheus, asks to be forgiven if he does not speak well (5.1–7), but before his narrative of events surrounding the disappearance of Herodes, Euxitheus recounts how the prosecutors arrested him using the wrong procedure; he then explains in detail why the procedure was wrong and why the prosecutors used it anyway (5.8–19). First, he was brought to trial by violent and highly illegal methods (5.8). He was denounced by the procedure of *endeixis* and arrested by *apagōgē* as if he were a common criminal (*kakourgos*), even though he was being accused of homicide and should have been prosecuted by the regular procedure for homicide (a *dikē phonou*). This is something that has never happened before. Even the prosecution, he argues, have recognized that he is not a *kakourgos* ('evil-doer') by charging him with homicide, not with theft or cloak-snatching, the two main crimes committed by *kakourgoi* (9).

In their speech, the prosecutors evidently argued that homicide is a great wrong (*mega kakourgēma*), which Euxitheus agrees it is, but like other great crimes, it is regulated by its own laws, which the prosecutors should have followed (5.10). Among the legal violations that resulted from using the wrong procedure are that the trial has to be held in the agora, whereas the homicide laws prohibit his presence in the agora; that the penalty is assessable, whereas the homicide law contains a fixed penalty; the trial is being held in a court building when it should be in the open air; and that the prosecutors and their witnesses have not had to swear

the strong oaths required by the homicide law (5.11–12). Their reason for acting in this way is that if Euxitheus had been charged by the regular procedure for homicide, he would have been free to leave Athens and go into exile before trial or even after delivering the first of his two pleadings (5.13).[14]

In essence, Euxitheus continues, the prosecution have enacted a law just for themselves, even though the existing homicide laws are the oldest and best in the city (5.14–15). By doing this they have left themselves the option to try him again on a charge of homicide if he is acquitted in the present trial (5.16). Finally, the prosecution did not allow him to post sureties and be released from prison, something that has never before happened anywhere; their motives for this were not to allow him to prepare for trial and to make him suffer physically. He is thus at a great disadvantage in this trial, but even so, he will do his best to prove his innocence (5.17–19).

As in the other examples, the points Euxitheus makes in this account of the prosecution's misuse of the law could have been made impersonally by confining his discussion to the laws, but it is important for his entire case that the misuse of the laws be tied personally to the prosecutors, and this could only be done by telling a story about them. His long account relating how their misuse of the law resulted in his own mistreatment sets the stage for his further attacks on the prosecution later in the speech when he continues to accuse them of misusing the law and mistreating others in illegal and unorthodox ways. Their motive, he suggests, is profit, not justice, making them the true criminals in this case. Thus, his overall argument is as much a story about the prosecutors' guilt as his own innocence.

My final example of a story told to clarify the meaning of a law comes from the trial *On the Crown*, in which Aeschines brings a *graphē paranomōn* ('indictment against illegality') against a decree proposed by Ctesiphon. The decree, as we saw above, would award a crown to Demosthenes 'on the ground that he always spoke and did what was best for the *dēmos*'. Among Aeschines' more technical arguments is the claim that by calling for the award of the crown to be announced in the theatre of Dionysus, Ctesiphon's decree violates the law that requires that crowns that are awarded by the people should be announced in the assembly, not the theatre (Aeschin. 3.32–48). After citing a law about where crowns should be announced, Aeschines warns that Demosthenes will introduce a different law, one dealing with the Dionysia, that allows crowns to be awarded in the theatre if the people so vote (3.35–6). It is impossible, however, Aeschines argues, that there could be two such laws that appear to be in direct conflict. He reminds the jury that the Athenians have established a board to review the laws annually and remove any such contradictions, and so they surely would have removed this one if it existed. So there cannot be another law that contradicts the law he has just cited (3.37–40).

Aeschines then tells a story about the enactment of the law about the Dionysia, which Demosthenes plans to introduce. The story is meant to explain what the law really means and why it does not contradict the law that Aeschines himself

has cited (3.41–7). People, he says, used to make announcements in the theatre about crowns awarded by tribes or demes or by foreign cities, and even announcements by individuals proclaiming that they were manumitting one of their slaves. All these announcements greatly inconvenienced the producers of plays (the *chorēgoi*) and the performers. At some point, therefore 'a legislator' (*tis nomothetēs*) observed this and enacted a law prohibiting anyone from announcing in the theatre that they were freeing a slave or that a crown was being awarded by a tribe or deme or by any other body (meaning any other body in the city). After this, the only announcements that could be made in the theatre were those about crowns from foreign cities. And to confirm this interpretation Aeschines notes another law that requires that crowns awarded in the theatre not be given to the individual recipient of the crown; instead, they had to be dedicated to Athena, as are the crowns awarded by the city of Athens.

As an explanation of the law's meaning, Aeschines' story may seem to be only moderately convincing, in part because it contains few details. It locates the law's enactment at some indefinite time in the past and does not connect it with any historical person or event. Like the other stories about laws that I have discussed, it involves a legislator, but the legislator is much less prominent in this story. He is just an anonymous ordinary citizen who steps up and does what the situation requires, and Aeschines gives the impression that anyone could have acted in his place. It is hard to judge whether the Athenian jurors in this case would have found Aeschines' story convincing, but in any case, Demosthenes seems to feel no need to dispute the story; he simply ignores it and instead, he gives his own, different explanation of the law.

I have tried in this brief overview to sketch out some of the ways in which stories contribute to forensic speeches in classical Athens, noting especially the ways in which stories can influence the jury's understanding of the meaning and applicability of various laws. I have argued that by telling a story, a good speaker can make his point more powerful and memorable than it would be if he presented an impersonal analysis of the law. This is probably because as humans, we tend to think in terms of stories. When we remember an event, rather than remembering a set of isolated facts, we prefer to assemble a series of facts in an order that makes sense to us, and ascribe plausible motives to the different agents involved, even if this requires us to omit or supply a fact or two and perhaps to adjust other facts in order to make sense of what we remember.

This suggests that in general the jurors would be more likely to be persuaded by and to remember a story than an analytical account of the law's meaning, and that forensic speakers, therefore, tend to rely on stories. This is as true today as it was in Athens. In my first paper on storytelling (Gagarin, 2003), I cited a modern handbook with advice for trial advocacy, which recommended, among other things, 'When you prepare for trial, step back from the microscope and consider your overall story. Its clarity and credibility will probably play as great a role in the outcome as any single event or piece of crucial evidence'.[15]

Storytelling was even more important in Athens, however, because the quality and quantity of hard evidence were almost always far less than they are today. Witness depositions and other documents that were introduced during these speeches almost always confirmed and supported a litigant's speech; rarely did they introduce any independent evidence. Other kinds of forensic evidence, moreover, were virtually non-existent. This absence of hard evidence meant that almost everything depended on the litigants' speeches, and this meant that the Athenians had little choice but to allow storytelling to flourish in Athenian courts.

Notes

1 I would like to thank the organizers of our panel in Dublin, Mike Edwards and Dimos Spatharas, for inviting me to participate, and the other members of the panel, who gave me very helpful feedback.
2 *Poetics* 7, 1450b23–27: τὴν τραγῳδίαν τελείας καὶ ὅλης πράξεως εἶναι μίμησιν ἐχούσης τι μέγεθος· … ὅλον δέ ἐστιν τὸ ἔχον ἀρχὴν καὶ μέσον καὶ τελευτήν.
3 Cf. Wohl in this volume.
4 See, for example, Dem 59.41, 64–70.
5 Aeschin. 3.49: ὅτι διατελεῖ καὶ λέγων καὶ πράττων τὰ ἄριστα τῷ δήμῳ.
6 Dem. 18.60: Ἃ μὲν οὖν πρὸ τοῦ πολιτεύεσθαι καὶ δημηγορεῖν ἐμὲ προὔλαβε καὶ κατέσχε Φίλιππος, ἐάσω· οὐδὲν γὰρ ἡγοῦμαι τούτων εἶναι πρὸς ἐμέ· ἃ δ᾽ ἀφ᾽ ἧς ἡμέρας ἐπὶ ταῦτ᾽ ἐπέστην ἐγὼ διεκωλύθη, ταῦτ᾽ ἀναμνήσω καὶ τούτων ὑφέξω λόγον, τοσοῦτον ὑπειπών.
7 *Lysias* 21–7.
8 A trierarch paid for the equipment and for the wages and maintenance of the rowers of a trireme, a Greek warship, for a year.
9 Lys. 32.27: ὥστε τούτοις λελογίσθαι ὅσονπερ ὅλον τὸ ἀνάλωμα αὐτῷ γεγένηται.
10 32.27: καίτοι τί αὐτὸν οἴεσθε πεποιηκέναι περὶ ὧν οὐδεὶς αὐτῷ σύνοιδεν ἀλλ᾽ αὐτὸς μόνος διεχείριζεν, ὃς ἃ δι᾽ ἑτέρων ἐπράχθη καὶ οὐ χαλεπὸν ἦν περὶ τούτων πυθέσθαι, ἐτόλμησε ψευσάμενος τέτταρσι καὶ εἴκοσι μναῖς τοὺς αὐτοῦ θυγατριδοῦς ζημιῶσαι.
11 Later in the speech (1.141–54) Aeschines similarly cites passages from the poets to illustrate the difference between 'decent men … and those whose love is illicit [sc. like Timarchus]' (141).
12 Hyp. *Eux.* 7: ὑπὲρ τίνων οὖν οἴεσθε δεῖν τὰς εἰσαγγελίας γίγνεσθαι; τοῦτ᾽ ἤδη καθ᾽ ἕκαστον ἐν τῷ νόμῳ ἐγράψατε, ἵνα μὴ ἀγνοῇ μηδείς.
13 Hyp. *Eux.* 9: ἐμαίνεσθε γὰρ ἄν, εἰ ἄλλον τινὰ τρόπον τὸν νόμον τοῦτον ἔθεσθε ἢ οὕτως· εἰ τὰς μὲν τιμὰς καὶ τὰς ὠφελίας ἐκ τοῦ λέγειν οἱ ῥήτορες καρποῦνται, τοὺς δὲ κινδύνους ὑπὲρ αὐτῶν τοῖς ἰδιώταις ἀνεθήκατε.
14 For further discussion of all these features, see MacDowell (1963).
15 Bergman (1989: 10–12).

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Chapter 2

Storytelling about laws and money

Solon on stage (Demosthenes 24.212–214)[1]

Catherine Psilakis

Prelude

To borrow the terms used by Lanni (2004: 3), 'both legal material and extra-legal material coexist in surviving popular court speeches from Classical Athens'. They facilitate juridical decision making. Even if Classics scholars still hotly debate the importance and the role of extralegal material and the place of the 'rule of the law', analysis of the surviving court speeches confirms the presence of different material outside the strict scope of Athenian law. In this chapter, I would like to focus on one of these types of material that is important in legal decision making: storytelling about the lawgiver, I argue, appears as a more refined and developed pattern than the simple appeal to the lawgiver. Gagarin offered a novel approach in applying storytelling as part of the broader field of 'Law and Literature' to the study of the Attic orators' speeches. As he emphasized,

> any other Attic speech which relies on a narrative account of events and uses stereotypical motifs to construct that account should be taken as a sign of the logographer's success in making his case to the jury by using the legitimate art of storytelling.
>
> (2003: 206)

This chapter underlines how storytelling contributes to establishing the norms of the ideal legislator in the fourth century BC in Demosthenes 24. As with previous speeches (Dem. 22, 20), Demosthenes 24 has the distinction of marking the orator's entrance into politics. Because of some interpolations, its authenticity has been often discussed. At the end of the discourse (24.212–14), Demosthenes tells the story of Solon speaking in a γραφὴ νόμον μὴ ἐπιτήδειον θεῖναι ('public action for making an unsuitable law'). Rather than focusing on the authenticity of the passage – some signs in the text show clearly that it is a forgery – it is more interesting to analyze Demosthenes' way of exploiting some social norms in the court as an argument to convince the jurors. Thus, three functions can be attributed to the storytelling about Solon: characterising speakers; offering a broader context of the dispute; and establishing the social norms of the good lawgiver.

Introduction

In the *Wasps*, Aristophanes exaggerated as well as pointed out some characteristics of the forensic discourses in the Athenian court as follows:[2]

> ἀλλ᾽ ἀκροῶμαι πάσας φωνὰς ἱέντων εἰς ἀπόφυξιν. (v. 562)
>
> I listen to the defendants saying anything to get an acquittal.[3]
>
> οἱ δὲ λέγουσιν μύθους ἡμῖν, οἱ δ᾽ Αἰσώπου τι γέλοιον. (v. 567)
>
> Some tell us stories, others some funny pieces of Aesop.

To borrow the terms used by Lanni (2004: 3), 'both legal material and extralegal material coexist in surviving popular court speeches from Classical Athens' and contribute to the decision making of the jurors.[4] Scholarship on the Athenian legal system and its interpretation is vast and will not be analyzed here for the sake of the word count.[5] But even if scholars still hotly debate the importance and role of this extralegal material in a case and consequently the place of the 'rule of the law',[6] analysis of the surviving court speeches confirms the presence of material outside the strict scope of the law. This could be narratives of past events, appeals to pity, quotation of poetry, comparison with past figures, *ekphrasis*,[7] expression of informal social norms to affect the jurors' verdict and so on. The list does not pretend, of course, to be exhaustive. Gagarin offered a fresh approach to forensic oratory by applying the concept of storytelling to the Attic orators' speeches.[8]

In this chapter, I would like to focus on one of these types of material that concern decision-making: storytelling about the lawgiver,[9] I argue, is a more refined and developed pattern than the simple appeal to the lawgiver.[10] This chapter aims at underlining how storytelling about the lawgiver contributes to establishing the norms of the ideal legislator in the fourth century BC. As with his previous speeches (Dem. 22 and 20), Demosthenes 24, *Against Timocrates* marks Demosthenes' entrance into politics. Because of some interpolations, the authenticity of the text has often been discussed. At the end of the speech (24.212–14), Demosthenes tells the story of Solon speaking in a γραφὴ νόμον μὴ ἐπιτήδειον θεῖναι ('public action for making an unsuitable law'). Rather than focusing on the authenticity of the passage – a careful reading of the text indicates that it is a forgery – it is more fruitful to analyze the way Demosthenes exploits social norms in the court as an argument to convince the jurors. I argue that there are three functions that can be attributed to the storytelling about Solon:

i) Firstly, storytelling about the old legislator Solon as an element in influencing the decision of the jurors forms part of the arguments based on the character (*ēthos*)[11] of the parties. The ideal representation of the lawgiver is used in comparison with current politicians engaged in corrupt practices like Timocrates, who is being prosecuted in the case. Here the speaker deploys the informal social norm of loyalty and service to the city. Through his appeal to

the authority of Solon, Demosthenes elaborates his own *ēthos* of a good and honest statesman, deeply concerned with what happens to the city.

ii) Secondly, storytelling about Solon is an element in influencing the decision of the jurors because it considers the broader context of the dispute.[12] It refers to circumstances and problems of contemporary Athens. Representing Solon as protector of the laws and the Athenian constitution was not an uncommon topic in forensic rhetoric in the fourth century BC. But in the narrative here, Solon's awareness of the economic problems (counterfeit coins in time of crisis) is underlined. Foregrounding economic concerns, the story about Solon delineates the general background of the case. For the orator, it is a convenient way of foregrounding the economic crisis in Athens, and thus of emphasizing and dramatizing the crime of the defendant.

iii) Thirdly, storytelling contributes to establishing the norms of the ideal legislator in the fourth century BC. Thus, it influences the reception of Solon as a complete lawgiver, who established laws in all domains: political, social and economic. Considering that forensic stories rest on mainstream ideological assumptions, the speech of Demosthenes demonstrates the wide influence of Solon on civic Athenian identity in the fourth century BC. This narrative is a vivid testimony to how Demosthenes considered his own role as *rhētor* in the Athenian democracy. The story about Solon is not only a reflection but also a *paradeigma* for the citizens of Athens.

The case and its characteristics

Before focusing on Dem. 24.212–14, some important elements of the speech should be pointed out. The trial is a γραφὴ νόμον μὴ ἐπιτήδειον θεῖναι ('public action for making an unsuitable law').[13] Such charges were heard in the popular courts (*dikastēria*). The prosecution claims that Timocrates introduced a new law that contradicted an old one (Demosthenes 24.33), but the proposed law is unsuitable. The trial takes place in 353–352, one year after *Against Androtion* (Dem. 22) and a few months after *Against Leptines* (Dem. 20). The case concerns public money.[14] Three Athenian citizens, Androtion, Melanopus and Glaucetes, sailing as ambassadors to the court of King Mausolus of Caria, captured a merchant ship with cargo worth nine talents (Dem. 24.11). The owners, merchants from Naucratis, made a formal request to the city state of Athens for the return of the sum. The *ekklēsia* (the assembly) rejected the request, arguing that the seizure was legitimate. However, the money had not been paid over to the state treasury. Around one year after the event, a friend of Androtion, Timocrates, proposed a new law permitting citizens to delay payment to the state treasury by providing guarantors for it. The circumstances of this proposal are debated at length in the speech. In brief, it had been decided that there should be a meeting of the *nomothetai* to consider any law needed for the Panathenaea, to be held towards the end of the same month (Hecatombeon). There is no explanation of the reason why it was thought that Timocrates' law was for the Panathenaea. Its purpose

was to save Androtion, Glaucetes and Melanopus from imprisonment. But the *nomothetai* and the Boule did not approve it. The new law was then suspended because Diodorus and Euctemon prosecuted Timocrates by a γραφὴ νόμον μὴ ἐπιτήδειον θεῖναι.

Demosthenes was for the second time the logographer at the request of Euctemon and Diodorus, who delivered the speech.[15] The brevity of the speech can be explained because Diodorus is the first speaker of the accusation, and that is the reason why there is a detailed narrative of the facts. The deuterology of Euctemon (a second discourse, generally briefer) followed, but it has been lost. The outcome of the trial is uncertain.[16] The only evidence is based on an epigraphic document from 346, a decree showing that Androtion is still involved in politics. The striking contrast between the protagonists is to be noted. Androtion, Melanopus and Glaucetes are well-known, established and elder statesmen in Athenian politics (Androtion was around 50 years old, Glaucetes up to 60). On the other hand, Demosthenes 24, *Against Timocrates*, like the previous speeches of Demosthenes (20 and 22), marks the young Demosthenes' entrance into politics.[17] But if the first two speeches have received plenty of attention from scholars, the same is not the case for the third one.

The second characteristic of Demosthenes 24 is, I argue, that it is an unfinished speech. Its authenticity has been doubted because of some interpolations from Demosthenes 22, *Against Androtion*.[18] In a few passages, oddly enough, Timocrates is no longer mentioned, and only Androtion appears (**183–6** correspond to Dem. 22.75–8).[19] There is a problematic vagueness about an important point of the case. At the beginning of the speech, it is said that the money should be paid back, while in the middle the orator considers that the refund has been issued (**187**). According to MacDowell (2009: 190), the ambassadors were eventually paid off and their claims were abandoned. If this hypothesis is right, what we have here is quite difficult to define. The status of this unfinished and short text could explain why there is no clear order in the second part of the speech. Challenging the idea that the speech is inauthentic, I would therefore be tempted to assume that what we have here is a kind of 'work-in-progress'. One might also consider this work as an immature speech of Demosthenes and consequently perfectible in terms of style and the development of his arguments.

There are five references to Solon in Demosthenes 24,[20] but none is directly relevant to the proofs. All the references are used to prove the unsuitability of the law. The one I am interested in is placed in the peroration. In this part of the speech, Timocrates is accused of damaging Athens by injuring the most admired laws of Solon and Draco (**204–11**) and immediately after comes the storytelling about Solon:

> Βούλομαι τοίνυν ὑμῖν κἀκεῖνο διηγήσασθαι, ὅ φασί ποτ' εἰπεῖν Σόλωνα κατηγοροῦντα νόμον τινὸς οὐκ ἐπιτήδειον θέντος. Λέγεται γὰρ τοῖς δικασταῖς αὐτὸν εἰπεῖν, ἐπειδὴ τἄλλα κατηγόρησεν, ὅτι νόμος ἐστὶν ἁπάσαις, ὡς ἔπος εἰπεῖν, ταῖς πόλεσιν, ἐάν τις τὸ νόμισμα διαφθείρῃ, θάνατον τὴν ζημίαν εἶναι.

> ἐπερωτήσας δ' εἰ δίκαιος αὐτοῖς καὶ καλῶς ἔχων ὁ νόμος φαίνεται, ἐπειδὴ φῆσαι τοὺς δικαστάς, εἰπεῖν ὅτι αὐτὸς ἡγεῖται ἀργύριον μὲν νόμισμ' εἶναι τῶν ἰδίων συναλλαγμάτων εἵνεκα τοῖς ἰδιώταις εὑρημένον, τοὺς δὲ νόμους ἡγοῖτο νόμισμα τῆς πόλεως εἶναι. Δεῖν δὴ τοὺς δικαστὰς πολλῷ μᾶλλον, εἴ τις ὃ τῆς πόλεώς ἐστι νόμισμα, τοῦτο διαφθείρει καὶ παράσημον εἰσφέρει, μισεῖν καὶ κολάζειν, ἢ εἴ τις ἐκεῖν' ὃ τῶν ἰδιωτῶν ἐστιν. Προσθεῖναι δὲ τεκμήριον τοῦ καὶ μεῖζον εἶναι τἀδίκημα, τὸ τοὺς νόμους διαφθείρειν ἢ τὸ ἀργύριον, ὅτι ἀργυρίῳ μὲν πολλαὶ τῶν πόλεων καὶ φανερῶς πρὸς χαλκὸν καὶ μόλυβδον κεκραμένῳ χρώμεναι σῴζονται καὶ οὐδ' ὁτιοῦν παρὰ τοῦτο πάσχουσιν, νόμοις δὲ πονηροῖς χρώμενοι καὶ διαφθείρεσθαι τοὺς ὄντας ἐῶντες οὐδένες πώποτ' ἐσώθησαν. Ταύτῃ μέντοι τῇ κατηγορίᾳ Τιμοκράτης ἔνοχος καθέστηκε νυνί, καὶ δικαίως ἂν ὑφ' ὑμῶν τοῦ προσήκοντος τύχοι τιμήματος.
>
> (212–14)

> I should like also to relate to you what they say Solon once said when accusing a man who enacted an unsuitable law. It is said that he told the jurors, after making his other accusations, that practically all cities have a law that if anyone debases the currency the penalty is death. He asked whether they considered the law just and right, and when the jurors agreed he said that he regarded silver as the currency invented for individuals for the sake of personal dealings, and the laws as the city's currency. The jurors ought to loathe and punish anyone who debases and counterfeits what is the city's currency, much more than anyone who debases that of individuals. As proof that it is an even greater offence to debase the laws than the silver, he added that many cities which openly use silver alloyed with copper and lead are safe and suffer no harm by it, but no people who used bad laws and allowed existing laws to be debased were ever preserved.[21]

Why should we apply the term 'storytelling' to this passage, which is not a narrative directly connected to the case debated? According to Aristotle, the term 'narration' or 'narrative' (διήγησις)[22] denotes in oratory that part of the discourse in which past events are narrated.[23] But this does not mean that narratives are exploited only in the 'narrative' part of the speech. Foss suggests that narrative was a distinct mode of argumentation because

> 'the narrative creates for both the storyteller and the audience a personal involvement in the narrated world and the act of narrative, in which emotional connection and moral evaluation are part of the experience of narrative. … Narrative is always involved in the question of whether an action is proper or incorrect, so that narrator invites the audience members to share the moral evaluation being offered'.[24]

Considering narrative in terms of moral evaluation fits precisely with more than one of the functions attributed by Aristotle to a peroration in a forensic speech.

The peroration aims at (1) conciliating the listeners, making them well-disposed towards the orator and ill-disposed towards the opponent (*captatio benevolentiae*); (2) magnifying (or minimizing) the importance of the topics treated; (3) exciting emotions in the hearers (*pathos*); (4) offering a brief recapitulation.[25] Strictly speaking, the narrative referring to Solon is not related to the facts narrated at the beginning of the speech (**10–16**). Although it is not relevant to the case, the narrative must be recognized as a mode of argumentation within the peroration. Two paragraphs before the narrative, the Athenians are praised for their legislation which was adopted in many other Greek cities: the orator reminds them of their duty to preserve Athenian laws from destruction or perversion.[26] Here the two camps are delineated: on the one side, all Athenians and therefore the jurors are praised for their laws and their capacity to preserve them; on the other side, the opponent is assimilated to those who debase and pervert the Athenians laws. The end of the narrative resumes the opposing camps: Timocrates versus 'ὑμῶν' designating the jurors.[27] At the same time, the introduction to the narrative and its conclusion emphasize the facts: the law proposed by Timocrates is not only unsuitable, but it may also harm all Athenian laws.[28] Even if Demosthenes is the logographer and Diodorus the speaker,[29] one might reasonably consider that this speech is another proof of Demosthenes' narrative ability and character portrayal already demonstrated in a previous case in which he was directly involved (Dem. 27).[30]

Before concluding this section, the role of narrative must be examined. A narrative should be clear, brief and probable.[31] The narrative about Solon does not entirely fulfil the last requirement. In a forensic speech delivered in a trial, the verb διηγήσασθαι refers to a codified and precise narrative about the facts (διήγησις).[32] Among the occurrences within the early Demosthenic corpus (Dem. 20, 22, 24), only two, both in our speech, introduce a story apparently unrelated to the case (**139** and **212**). The first concerns the Locrian anecdote about establishing laws with one's neck in a noose, which is tightened if the proposed law is rejected. The anecdote is clearly presented as an example:

> Βούλομαι δ' ὑμῖν, ὦ ἄνδρες δικασταί, ἐν Λοκροῖς ὡς νομοθετοῦσι διηγήσασθαι. οὐδὲν γὰρ χείρους ἔσεσθε παράδειγμά τι ἀκηκοότες, ἄλλως τε καὶ ᾧ πόλις εὐνομουμένη χρῆται.
>
> (139)

> I should like, members of the jury, to relate to you how legislation is established among the Locrians. It will do you no harm to hear an example, especially one set by a well-governed city.

The same *formula* introduces the anecdote about Locrian legislation and the story about Solon (βούλομαι … ὑμῖν … διηγήσασθαι).[33] Consequently, the legendary dimension of the Locrian anecdote[34] casts doubt on the authenticity of the narrative referring to Solon. Another mark of the fictional dimension characterizing this

storytelling is its vagueness (ὅ φασί ποτ' εἰπεῖν Σόλωνα): the expression refers to oral memory and conveniently erases every source of the narrative. The lack of circumstances about the process is to be connected to the previous element I pointed out: neither the law nor the orator who proposed it is mentioned. Furthermore, the charge of proposing an unsuitable law, γραφὴ νόμον μὴ ἐπιτήδειον θεῖναι, is first recognized and well attested no earlier than the fourth century BC.[35] The last element marking the fictional dimension is the comparison between the currency (money) and the laws. The comparison had already appeared in the last words of another speech without any reference to Solon (Dem. 20.167). My discussion so far suggests that the narrative about Solon is an interpolation. Despite this, Demosthenes' art of storytelling is worth considering, in order for us to understand the role attributed to this narrative.

Storytelling and the art of characterizing speakers

As has been pointed out by many scholars, the art of telling stories contributes to personal characterization.[36] The similarities between the Locrian anecdote and the storytelling about Solon are salient. Following Aristotle,[37] an example (παράδειγμα) such as that of the Locrians could consist in relating things that have happened before or an invention. In the speech, the Locrian anecdote consists rather of a representation of the fear that innovation could destroy the institutions of the forefathers: that is the reason why it is habitually regarded as a paradigmatic resistance to change.[38] It offers a convenient parallel with a Demosthenes worried about the counterfeit law proposed by Timocrates. The same conclusion derives from the storytelling about Solon. To refine the comparison, the two stories develop an opposition between current statesmen such as Timocrates, Androtion and others who were prosecuted with figures of the past. Comparison with Solon as a good legislator is a pattern already present in forensic oratory, for example in Lysias (30.25–30) and Demosthenes (22.30–32, 20.102–4). In Dem. 22, Androtion is characterized as having committed faults in almost precisely the same terms:

> Οὕτω δ' αἰσχρῶς καὶ πλεονεκτικῶς ἔσχε πρὸς ὑμᾶς
>
> (Dem. 22.56)

> Οὕτω δ' ἀνίσως καὶ πλεονεκτικῶς ἔσχε πρὸς ὑμᾶς Ἀνδροτίων
>
> (168)

On the one hand, politicians like Androtion engaged in corrupt practices; on the other hand, Athens had a renowned lawgiver who was deeply concerned with enforcing democracy and upholding the laws of the city.[39] The fictional dimension of the story about Solon must not conceal how Demosthenes as logographer is a good storyteller. Aristotle recommends that speakers employ the narrative

to mention whatever bears on their own virtue or on the opponent's wickedness.[40] The narration ought to be indicative of the different characters involved (Herm. *Prog.* 9). As a prerequisite for the effective expression of *ēthos*, the speech should be appropriate to the speaker's character if the litigant wants to convince the audience. Demosthenes, as logographer in a case of γραφὴ νόμον μὴ ἐπιτήδειον θεῖναι develops the *ēthos* of Solon as orator (ῥήτωρ) in the same type of case as the one in which he is involved. To what extent could this process of *mise en abîme* (a story *within* the story) have been effective and convincing to the audience?

a) First, orators in popular court cases implied that the jurors shared a large body of knowledge and opinion, and they often addressed the jury as if it were a single body that sat in judgement over many decades. With the process of *mise en abîme*, Demosthenes' attempt to influence the decision of the jurors is quite clear. The speaker is supposed to stand in front of the jurors as Solon did, according to an 'unknown tradition'. The litigants are involved in a case of γραφὴ νόμον μὴ ἐπιτήδειον θεῖναι, as Solon was. In the preceding case, the jurors agreed with Solon. The speaker is awaiting the same decision from the jurors, who are compelled to agree with him, after the narrative's development about Solon and because of the authoritative figure of the old lawgiver. As suggested by Lanni, 'there was no way to verify a litigant's citation of a precedent, and although citing a non-existent law in court was punishable by death, no decree outlawed the invention of favourable precedents'.[41] Clearly, the fictional precedent in which Solon is involved has been emphasized to the extent that the audience and the jurors could not believe it otherwise than as a 'noble lie'. In my opinion, the forgery is interesting because it fills the gap between Solon's time and the present trial.[42] We have later examples of sophisticated and impressive perorations in Athenian forensic oratory, such as Aeschines 3.257–9, which confuse past and future temporalities and cite great figures of the past – including Solon, once again.[43]
b) Second, since the effectiveness of the comparison depends on the similarity between the *ēthos* of the character and the representations of this character in the audience's knowledge,[44] the speaker develops two patterns of Solon's representation: as the lawgiver and as the good orator experienced in trials. For these two patterns, I refer to the legal vocabulary borrowed from the Athenian legal procedure of the fourth century for designating the charge (κατηγοροῦντα νόμον τινὸς οὐκ ἐπιτήδειον θέντος); the appeal to the jurors (λέγεται γὰρ τοῖς δικασταῖς αὐτὸν εἰπεῖν); the verb κατηγορέω; the four occurrences of νόμος; the crime (τὰδίκημα) and the penalty (θάνατον τὴν ζημίαν εἶναι). Furthermore, the words of Solon are presented as a τεκμήριον ('testimony'). This word strengthens the power of the indirect discourse attributed to Solon and contributes to the confusion about the status of the narrative, oscillating between a legendary precedent and a testimony in the legal sense of the term. But we should bear in mind that, at that time, Athenians ascribed

> to Solon the right of appeal to the People's Court for any citizen and more generally their whole procedure of *nomothesia*.[45] Modern scholars know that the Athenians used to attribute their legal system to a founding figure.[46] According to this trope of 'the lawgiver', the Athenians considered that all the established laws were the product of a single person of the distant past.

Consequently, the art of storytelling consists in representing the founder of this appeal to the People's Court as applying this right to himself in a case. Without being widely developed, Solon's *ēthos* benefits from the other previous references to Solon in the same speech.[47] Storytelling enforces Solon's character as a legitimate orator and democratic lawgiver using his right as a citizen to preserve the city from the overthrowing of democracy. The presentation of Androtion and Timocrates as orators engaged in corrupt practices and characterized as having oligarchical tendencies is outweighed by the encomiastic representation of Solon, benefiting from his popularity at that time.[48] The opposition between Timocrates and Solon (and therefore the comparison) does not need to be developed because there is a positive evaluation of the behaviour of Solon: it had already been said many times in the first part of the speech. Among the numerous occurrences, the following rhetorical question and its force is a good example of this positive evaluation of Solon: Ὅμοιός γ', οὐ γάρ, ὦ ἄνδρες Ἀθηναῖοι, Σόλων νομοθέτης καὶ Τιμοκράτης (**103**).[49] More generally, a kind of common knowledge about the old lawgiver Solon is taken for granted. To conclude this section, storytelling draws a vivid comparison of opposite characters and offers Demosthenes as logographer the opportunity to close the speech with a very negative representation of the defendant. By contrast, his own *ēthos* as a statesman with responsibilities to the city, in the line of Solon the famous lawgiver, emerges progressively throughout the discourse.

Storytelling as a broader context of the dispute[50]

Storytelling ensures for Demosthenes a stronger accusation by dramatizing the circumstances of the case. Contemporary events supply the orator *de facto* with material conducive to creating the atmosphere of a drama. The time of the trial, in the mid-fourth century, was a turbulent one in Athens. The city was experiencing a severe economic crisis.[51] As noted by Burke, the situation of Athens at the end of the Social War was disastrous:

> 'total annual revenues to the city amounted to a scant 130 talents, resulting in the inability of the city to provide pay to what was surely a significant portion of those citizens who over time had become habituated to it. The demands of the *eisphora* tax occasioned by the war had become sufficiently onerous to some elite as to have been met with instances of non-payment'.[52]

Demosthenes exploits this specific context in the storytelling of the peroration. Special attention is paid to counterfeit currency in the narrative involving Solon.

Let me briefly recap the main contours of the economic crisis. There were three phases within the reorganization of the Athenian monetary system.[53]

First phase: at the end of the Peloponnesian War, Athens was heading for bankruptcy. In 406–405 Athens started to mint silver-plated bronze coins. According to Aristophanes' *Assemblywomen*, vv. 817–33 (a play produced c. 393 BC), Athens later withdrew the emergency coins and returned to the Attic Silver Standard. Recent numismatic discoveries have confirmed that counterfeit coins existed and circulated in Athens.

Second phase: in 375 BC, the well-known silver law of Nicophon was passed.[54] This was a revision of the regulations concerning silver coins circulating in Athens, to facilitate mercantile exchange. The law's aim was that silver coinage remain a reliable exchange medium. The law details the responsibilities of two public slaves to serve as certifiers of coinage. Both in the agora (as before the new law) and (after the law) in Peiraeus an expert state official was made freely available to any party uncertain about the provenance of silver coins that appeared to be Athenian 'owls'. The terminology of counterfeit coins used in the law (lines 10–11) is particularly interesting:

> Law of Nicophon:[55]
>
> ἐὰν δὲ ὑπ[όχαλκον]
> ἢ ὑπομόλυβδον ἢ κίβδηλον, διακοπτέτω.
>
> but if it has a bronze core |
> or a lead core or is a counterfeit, he shall cut.

These words are not attested earlier and ὑπομόλυβδον[56] is a *hapax* built on the word μόλυβδον used by Solon in the narrative:

> Προσθεῖναι δὲ τεκμήριον τοῦ καὶ μεῖζον εἶναι τἀδίκημα, τὸ τοὺς νόμους διαφθείρειν ἢ τὸ ἀργύριον, ὅτι ἀργυρίῳ μὲν πολλαὶ τῶν πόλεων καὶ φανερῶς πρὸς χαλκὸν καὶ μόλυβδον κεκραμένῳ χρώμεναι σῴζονται.
>
> (214)

> By way of proof that it is a more heinous crime to debase laws than silver coinage, he added that many states that use without concealment silver alloyed with copper and lead are safe and sound and suffer no harm thereby.[57]

Third phase: the final stage of the monetary reorganization in Athens corresponds to the time of the discourse at the end of the Social War.

Thanks to the art of storytelling, the character of Solon is clearly portrayed anachronistically and represented as interested in changing the monetary system (as in the decree of Teisamenus, Andoc. 1.83–4) and more generally in the economic problems of Athens. But storytelling provides much more: the narrative

consists of a reference to contemporary debates about money and justice. The play on the words *nomos* (law) and *nomisma* (currency) reflects how strong the connection was between them. Aristotle underlined this connection (Arist. *EN* 5.8, 1133a29–31) and Plato (*Laws* 5.742a) insisted on the necessity of putting currency under control.[58] The Aristotelian and Platonic passages to which I am referring are reflections about the notion of justice and how to establish it in the city for all the citizens. To what extent could these ethical debates about justice and currency be connected to the storytelling about Solon? As Foss suggested, a narrative is never ethically neutral, as it induces an evaluation – possibly implicit or explicit – of the events narrated. It is possible, therefore, to postulate that the narrative does not only contextualize the events. With the play on *nomos*/*nomisma* and the comparison between currency counterfeit and bad law, the narrative provides a clear ethical significance to the case. For Demosthenes, representing Solon referring to ethical debates about justice and currency is a way to moralize strongly and emphasize the narrative. The story imposes a vision of the world in which plated coins are less dangerous for the community than an unsuitable law, even if the penalty for fabrication of plated coins was possibly death. As is argued during the speech, the law proposed by Timocrates is presented as a danger for the democracy and its institutions. The comparison between Timocrates and the Thirty does not need to be developed again in the peroration, since this has already been done in the speech.[59] Making the oligarchic revolution clearly present as historical background of the narrative aims at exploiting not only the memory of the tragic events from 404 BC, but also anxieties concerning the stability of the Athenian democracy and of its currency.

The two levels of contextualization, by which I mean the historico-economic context and the ethical context, ensure a stronger argument against the defendant. Because the narrative exploits both Athenian fears about monetary problems connected to counterfeit currency and political problems concerning the risk of overthrowing the democracy, it conveniently balances the weakness of the case. It could, however, be considered as an attempt to smooth over the examination of the law which was heavily detailed in the proof in the first part of the speech. To sum up, the narrative allows a kind of dramatization of the case, which it was devoid of before the peroration of the speech.

Storytelling and establishing the social norms of the good lawgiver

As Lanni points out (2009: 704–7), loyalty to democracy and service to the polis were extra-statutory norms often discussed in court cases and especially in cases in the people's courts after the restoration of the democracy in 403 BC. Instead of advertising his democratic sympathies, Demosthenes provides a narrative that sums up this opposition between democracy and oligarchy, based on one of the greatest figures of the democratic restoration, Solon. But the narrative not only adds to the arguments against the defendant: more broadly, it contributes to

reinforcing a social norm about the good legislator which is offered by the orator as an example to his fellow-citizens. What are the characteristics of this ideal legislator? He is described as preserving the Athenian democracy,[60] proposing laws that help citizens to become better[61] and worrying about monetary questions and economic matters.[62]

A close reading of the three speeches – Demosthenes 20, 22 and 24 – provides a fresh insight into the function of the storytelling about Solon and its powerful persuasiveness.[63] Demosthenes uses the same method in each speech. First, he ascribes to Solon the laws broken by the defendant. These laws are always praised as good and suitable for the city and the democracy. There is further a refined explanation about the law and Demosthenes indicates to what extent the proposed law is breaking an older one. Occasionally, his attacks are aimed directly against the defendant (Dem. 22 and 24), sometimes they indirectly point out the stupidity of the defendant, who is unable to understand Solonian laws (Dem. 20.102).[64] Finally, Demosthenes elaborates an interpretation of the lawgiver's mind by 'looking at what the lawgiver means' (τὴν διάνοιαν τοῦ νομοθέτου σκοπεῖ). As expected, his interpretation is oriented and used in a comparison between politicians of his time and a former one, the famous lawgiver Solon, who is regarded as the founder of the 4th-century Athenian democratic legal system. The systematic method is striking: it concerns not only the laws related to the case but also laws irrelevant to the charge.[65] But if the same method is used in the three speeches of Demosthenes, storytelling about Solon in the peroration goes beyond the literary process of 'looking at what the lawgiver means', developing a vivid narrative to support his arguments. Along with Isocrates, Demosthenes is one of the orators who used more broadly references to the past, to the forefathers and to individual great figures like Solon.[66] This use of the past to shape the future in forensic oratory has often been commented on, but in my opinion, the answers given by scholars remain neither satisfactory nor complete. In the three speeches of the young Demosthenes, praising the law seems to imply praising the lawgiver. All the comments are based upon the idea that laws reflect the character of the lawgiver, and it works both ways. Examining laws unrelated to the case allows Demosthenes to develop the portrait of the ideal legislator and, in doing so, to disqualify his opponent. In comparison with previous discourses in forensic oratory, the very new element in the stories about the legislator that can be observed in the three speeches of Demosthenes (20, 22, 24) is the strong connection between Solon and the democracy.

To return to my point, I conclude that storytelling about Solon is the final element, a kind of *climax*, of a long comparison developed throughout the speech. It is difficult to state whether the narrative concerning Solon was considered persuasive or not. But this kind of storytelling about Solon, exploiting τὴν διάνοιαν τοῦ νομοθέτου σκοπεῖν,[67] is so often used by other orators and other speeches by Demosthenes but also Aeschines, and before them Lysias 30 (even if it is less developed there), that we can surmise that this type of arguing through storytelling was thought to be persuasive. A brief survey of the other surviving popular

court speeches may help us determine whether it carried weight or not in such charges. With the case of the false embassy, for example, we have the rare opportunity of knowing the speeches of both litigants, Demosthenes and Aeschines. But because the legal dispute is well known, I will not go into the details here. Aeschines' reference to the statue of Solon at Salamis with his arm respectfully inside his cloak is another short narrative about Solon (Aeschin. 1.25). Scholars have established that this 'hand-inside' pose was used to portray the moderate orator addressing the Assembly before Aeschines, and it became the archetype of the good orator even in sculpture. We can find the same method here as in Demosthenes: Aeschines refers to the Solonian laws that Timarchus had broken. The storytelling about Solon is a source of a social norm about how to address an assembly in an appropriate way. And once again, this argument is based upon extra-statutory norms about private conduct and sexual norms simply because Aeschines had no consistent proof that Timarchus ever sold himself into prostitution. Like Dem. 24, the storytelling balances the lack of evidentiary material (more precisely, in Dem. 24 it is less a question of lacking than weakness of the accusation). The parallel between storytelling in Dem. 24 and Aeschin. 1 is not based on conjecture. One should keep in mind the eristic and dialogic dimensions of Aeschines' speech. Some textual parallels clearly show that Aeschines knew Dem. 20, 22 and 24, and borrowed an expression from them.[68] I contend that the first developed storytelling about Solon (**212–14**) became such a hallmark of Demosthenes that Aeschines did not hesitate to copy him in the rhetorical process. That is why Demosthenes' as well as Aeschines' speeches are regarded as an invaluable resource for the study of ancient Greek social norms and culture. In arguing on the basis of storytelling, both orators were putting social norms to the fore and, in doing so, they facilitated informal enforcement of the norms they ascribed to Solon.

Conclusion

Within my case study, the narrative refers to social norms (loyalty to the city and to the democracy) that were particularly vivid in the political agenda. That is the reason why storytelling becomes one of the *criteria* upon which jurors should cast their vote. The example provided by Dem. 24.212–14 is interesting because it is the first developed storytelling about Solon in the corpus of Demosthenes and it goes further than the literary process of 'looking at what the lawgiver means' (τὴν διάνοιαν τοῦ νομοθέτου σκοπεῖ) used before. More dramatic than a simple appeal to the lawgiver, storytelling offers resources for convincing the jurors and the audience. In terms of legal statement, it offers an example of a jurors' decision that the current jurors are invited to follow, a kind of precedent. The jurors are invited to vote as their forefathers did. In terms of rhetorical pattern, storytelling provides a dramatization emphasizing the economic crisis and the importance of applying the law when it is a question of money from the state treasury. The political and economic background is to be connected to fear of another oligarchic revolution.

Beyond the discourse and the case, storytelling is a fascinating way of inquiring into the method of Demosthenes. This approach provides fresh insights into the different types of argument used in his three first speeches (Dem. 20, 22, 24). If we focus on the last one, as I attempted to show, narrative involving Solon developed an explanation of the lawgiver's mind and became a characteristic of Demosthenes' method that would be copied and mocked by Aeschines. Representation of Solon in storytelling (**212–14**) is based upon two ideological patterns of Athenian civic life: respect for the laws as a fundamental value of democracy; and manipulation of the past to influence the future and shape the past. Both these characteristics can be found in each storytelling about Solon after 353 BC and consequently show the influence of Demosthenes' art of storytelling on the reception of Solon.

Notes

1 This is a revised version of a paper I presented at the 9th Celtic Conference in Classics in June 2016. I am grateful to members of the audience for their questions and suggestions.
2 As noted by Hall (1995: 39), 'this is a comic, biased, and exaggerated account of the proceedings in the Athenian *dikastērion*. But Aristophanes' audience would not have found it amusing had it borne no relation to reality'.
3 Translations by Lanni (2004).
4 See Plastow in this volume.
5 On the reforms from the beginning of the fourth century BC allowing the rule of the law in Athens, see Ostwald (1986: 497–524); Sealey (1987: 146–8). For an overview of the various approaches to the Athenian legal system, see Lanni (2006: 6) and more recently Harris (2013: 10–11, n. 34).
6 For the importance of the rule of the law, Arist. *Pol*. 3.15., 1287a17-25.
7 See Webb in this volume.
8 Gagarin (2003: 206).
9 See Gagarin in this volume on Aeschin. 1.6–35.
10 For the appeal to the lawgiver, see Johnstone (1999: 25–33).
11 On *ēthos* in forensic oratory, see Johnstone (1999: 93–108); Lanni (2006: 59–64); Woerther (2007: 14–17).
12 On the reference to lawgivers as a way to criticize contemporary institutions, see Thomas (1994: 119–33).
13 See Kremmydas (2012: 3–33); Canevaro (2016: 39–58).
14 See MacDowell (2009: 182–3).
15 Burke (2002: 176 n. 57), 'The indictment of Timocrates (Dem. 24), delivered in the summer 353 BCE, in certain respects may be seen as a sequel to the indictment of Androtion'.
16 On the failures encountered by Demosthenes at the beginning of his career in the *dikastēria*, see Cawkwell (1962: 377–8).
17 For an overview of the different political factions and the role of Demosthenes, see Burke (2002: 170–6).
18 **160–4** correspond to 22.48–52; **172–4** correspond to 22.65–67; **176-82** correspond to 22.69–74.
19 **183–6** correspond to 22.75–78. Navarre and Orsini (1954: 187 n. 1), considered that this is an 'interpolation maladroite' because only Androtion is mentioned. On the authenticity of the speech, see MacDowell (2009: 195).

20 **103–6**, **113–16**, **142–3**, 148–51, 210–11, **212–14**. Concerning the references to Solon in forensic oratory, in particular in Aeschines 1, see Fisher (2001); for the Attic orators, see Psilakis (2014).
21 Translation by MacDowell (2009).
22 For a definition, Arist. *Rhet.* 3.16.1–3, 1416b18.
23 On judicial narratives, Arist. *Rhet.* 3.16.4–10, 1416b29–1417b11.
24 Foss (2009: 308–9).
25 Arist. *Rhet.* 3.19.5, 1420a–1420b.
26 **210**: the term used is λυμαίνομαι in its moral sense.
27 **214**: Ταύτῃ μέντοι τῇ κατηγορίᾳ Τιμοκράτης ἔνοχος καθέστηκε νυνί, καὶ δικαίως ἂν ὑφ' ὑμῶν τοῦ προσήκοντος τύχοι τιμήματος.
28 It recalls passages representing Timocrates as an oligarch (**76, 77, 152, 154**).
29 Hereafter, I shall refer to Demosthenes only as logographer.
30 Gagarin (2014: 90–2). For further analysis of narratives in Demosthenes, see Edwards (2004: 343–8).
31 Kennedy (1999: 42).
32 See n. 22 above.
33 On Demosthenes' method of indicating the transition to the narrative with various metanarrative narratorial interventions, see Edwards (2004: 343).
34 On the legendary Zaleucus and the Locrian laws, see Gagarin (1986: 58–65).
35 See Kremmydas (2012: 3–33); Canevaro (2016: 39–58).
36 See Edwards and Spatharas in this volume.
37 Arist. *Rhet.* 2.20.2, 1393a.
38 Boegehold (1996: 208–9).
39 The same opposition is developed in 210–12, as was pointed out in n. 28.
40 Arist. *Rhet.* 3.16. 8–10, 1417a16–36.
41 Lanni (1999: 45).
42 For other examples of stories about the past of the city with references to Solon, see Aeschin. 1.25 and Dem. 19.251–6.
43 Webb (2009: 20); Westwood (2017: 57–74).
44 For common knowledge as evidence of social memory, see Steinbock (2013: 2).
45 Canevaro (2013: 139–60).
46 Johnstone (1999: 28).
47 Two characteristics are common to all the references to Solon in Dem. 24: (a) he is presented as a πρῶτος εὑρετής and this status as the 'first' or the 'unique' is conventional in forensic rhetoric, sharing its use with encomiastic rhetoric, see Arist. *Rhet.* 1.9. 38, 1368a; (b) he is praised because he is an old lawgiver and the idea of a 'golden age', better than the present, is frequently developed for its proximity with the law's sacred dimension, see Pl. *Phlb*. 16a; Psilakis (2015: 35–46).
48 On the references to Solon as a single authority figure of the past, see Fisher (2001: 127): 'what is most important about the rhetoric of the appeal to the intentions of the lawgiver is to give authority to their own, usually partial, interpretations of the laws relevant to their case'. For an exhaustive study of Solonian references as a part of argumentation and rhetorical strategy in Isocrates, Aeschines and Demosthenes, see Psilakis (2014).
49 For rhetorical questions as a core part of Demosthenes' narrative, see Edwards (2004: 348).
50 For this function of the narrative, see Spatharas (2009: 100–1).
51 Cargill (1981: 131–5); Cawkwell (1981: 40–55).
52 Burke (2002: 170).
53 I follow the exposition of Pébarthe (2012: 237–60).
54 Text and translation from Rhodes and Osborne (2003: 113–15).

55 Ober (2015: 51–79).
56 Denoting a lead-core coin.
57 Translation www.perseus.tufts.edu.
58 Arist. *Pol.* 1.3.17.
59 **90, 100, 101**.
60 **99, 100, 106, 212–14**.
61 There is a clear pedagogical dimension: **103–6**.
62 **212–14**.
63 These three speeches are taken together because they mark Demosthenes' entrance into politics.
64 Kremmydas (2012: 367), 'a very stinging comment indeed'.
65 I refer to **103–6** and **113–16** concerning theft.
66 Only six forensic speeches from Isocrates have been preserved. In the rest of his works, the use of narrative serves different purposes.
67 Ar. *Rhet*. 1.13.17, 1374b11–13.
68 See the use of πρόνοια applied to Solon in Psilakis (2014: 493–9).

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Chapter 3

The devil's in the detail

Including 'irrelevant' details in homicide narratives

Christine Plastow

The question of relevance in the Athenian courts has been contended in recent scholarship. The traditional view held that the forensic speeches were littered with material highly irrelevant to the case at hand, and thus that there cannot have been any restrictions placed on the relevance of material presented to the courts, or that if there were restrictions, they were almost entirely disregarded.[1] More recently, scholars have reassessed this 'irrelevant' material through a different frame, and suggested that, although it may not fit modern legal standards of relevance, it would be admissible to an ancient Athenian court operating under rules that allowed only relevant material to be mentioned in court.[2] The question of whether this rule existed, and if so, whether it was regularly broken, is still under debate.

The evidence suggests that there must have been at least some expectation of relevance in the courts, whether there was a formal rule or not.[3] Nevertheless, the kind of material that might be considered irrelevant – character assassination and self-aggrandizement in particular – nevertheless held great rhetorical power. Such material was particularly apt to provoke emotional responses from the jury, such as anger, pride, disgust or pity, emotions which could play a major role in swaying a juror's opinion one way or the other, and which thus could have significant effects on the outcome of the case.[4] As such, it seems that speakers often considered that the rhetorical benefit of using such material outweighed any potential detriment.

One point on which scholars can generally agree is that the homicide courts certainly were held to a high standard of relevance. A number of ancient sources either suggest or state outright that litigants in the homicide courts had to keep to the point, and indeed, Antiphon 5 suggests that an oath was sworn to this effect.[5] In the *Rhetoric*, Aristotle is clear on the value and importance of relevance in court, and presents the Areopagus as the ideal in this regard.[6] Antiphon takes a similar view of the importance of the rule in speech 5, stating that a defendant should only be convicted for the crime for which he is on trial, and not any other crimes or behaviour, just as no good behaviour should let him off the hook.[7] It is apparent that relevance from the speakers was generally considered to be conducive to a just decision by the jury,[8] and that the solemnity and seriousness of homicide trials, both for the parties involved and for the city, insisted on a particular level of rigour in this regard. It can be assumed that the relevance

restrictions applied across all of the homicide courts, particularly on the evidence of Antiphon 6, which probably took place at the Palladion and seems to conform to the restriction.[9]

But the fact of the stronger restriction on irrelevance in the homicide court did nothing to lessen the rhetorical value of irrelevant material. We certainly find fewer digressions of the type that seem irrelevant to the modern reader in the speeches from the homicide courts, but they are by no means absent. In these courts, speakers may have often tried to 'soften' the irrelevance of such material to avoid the repercussions of speaking off topic; one prominent technique to achieve this was the explicit acknowledgement of potential irrelevance, used most prominently at Lysias 3.44–6, delivered at the Areopagus. Here, I wish to explore another method for the exploitation of the effects of 'irrelevant' material on the jury in the homicide courts. The narrative of a speech offered an ideal opportunity to include details of questionable relevance. Features such as clear characterization and vivid description were necessary to create *ekphrasis* and *enargeia*, and thus a more persuasive version of events.[10] These features regularly required apparently 'irrelevant' details that primarily served to flesh out the narrative, but which may in fact have had a double purpose in intending to sway the jury's opinion of one or the other party in the case by provoking emotional responses. As such, they may have allowed speakers to achieve some of the same effects as truly irrelevant material without any of the repercussions.

There is no extant evidence contemporary to the orators as to how the relevance rule was enforced in the homicide courts. It is possible that the *thorubos* ('clamour') of the jury or the *periestēkotes* ('bystanders') would override any speaker who attempted to deviate from the point at hand.[11] This would not differ, however, from the likely situation in the dikastic courts, and does not account for the emphasis that the procedure received in the homicide courts. Two late sources suggest the presence of a *kēryx* ('herald') in the Areopagus, and that his duties may have extended to enforcing the relevance rule:

> οἱ δὲ ἔστ᾽ ἂν μὲν περὶ τοῦ πράγματος λέγωσιν, ἀνέχεται ἡ, βουλὴ καθ᾽ ἡσυχίαν ἀκούουσα· ἢν δέ τις ἢ φροίμιον εἴπῃ πρὸ τοῦ λόγου, ὡς εὐνουστέρους ἀπεργάσαιτο αὐτούς, ἢ οἶκτον ἢ δείνωσιν ἔξωθεν ἐπάγῃ τῷ πράγματι οἷα πολλὰ ῥητόρων παῖδες ἐπὶ τοὺς δικαστὰς μηχανῶνται παρελθὼν ὁ κῆρυξ κατεσιώπησεν εὐθύς, οὐκ ἐῶν ληρεῖν πρὸς τὴν βουλὴν καὶ περιπέττειν τὸ πρᾶγμα ἐν τοῖς λόγοις, ὡς γυμνὰ τὰ γεγενημένα οἱ Ἀρεοπαγῖται βλέποιεν.
>
> (Luc. *Anach*. 19)

> As long as they [the litigants] spoke to the issue, the Council tolerated them and listened quietly. If someone either delivered a proem prior to his argument in order to make them [the judges] more well-disposed, or dragged into the issue an extraneous appeal to pity or a rhetorical exaggeration – which are the sort of things that the students of rhetoricians devise against the

> judges – the *keryx* came forward and immediately silenced him, forbidding him from talking nonsense to the Council and disguising the issue with his words, so that the Areopagites could look at the events unadorned.[12]

> ἐν τῷ δικαστηρίῳ τῷ ἐν Ἀρείῳ πάγῳ οὐ χρῆσις ἦν προοιμίου· κῆρυξ γὰρ ἐκήρυττε προσφωνῶν καὶ παρεγγυώμενος τῷ εἰσιόντι· μὴ προοιμιάζου μηδὲ ἐπίλεγε.
>
> (Anon. scholiast to Hermog. *Inv.* 7.64.10–13)

> in the court of the Areopagus the *prooimion* was not used; for the *kēryx*, addressing and exhorting those coming in, announced, 'do not speak a *prooimion* or an epilogue'.[13]

The latter passage can be taken with Pollux 8.117 to suggest that a *prooimion* was a likely location for irrelevant material. The fact remains that both of these texts were written at least 500 years after the orators, and therefore we cannot be sure that they accurately reflect classical Athenian practices. In some respects they are clearly idealizing and inaccurate. Most importantly, we do find *prooimia* in both extant speeches from the Areopagus.[14] We also find them in homicide speeches from the other homicide courts.[15] We should not discount the possibility that the *kēryx* acted as an enforcer of relevance, but we should also be cautious; no solid conclusion can be drawn.[16] It is plausible, then, to suggest that the primary parties who would object to the use of irrelevant material would be the jurors themselves.

Although a dichotomy of relevance and irrelevance is not necessarily the most helpful way of viewing the kinds of statements I will examine here, it is nevertheless useful to attempt to understand the kinds of statements that would have been considered 'irrelevant' in the Athenian homicide courts. It is useless to start from modern conceptions; the forensic speeches make it clear that far more material was admissible than would be in most modern courtrooms. There is no extant ancient catalogue of material that was classed as *exō tou pragmatos*, or even an indication as to whether this was a concept that would have been fixed, rather than decided on a case-by-case basis. In light of this, it remains challenging to attempt to justify any individual statement or class of statements as relevant or irrelevant.[17] But if the rule existed, it must have existed to ban particular types of material. Aristotle's direction to avoid provoking the jury's emotions, as well as his and Antiphon's desire for a focus on the facts of the specific crime on trial, may give us a little more information, but still leave much open to interpretation, and, indeed, there are clear attempts to provoke emotion in the extant speeches, as we shall see. There is, however, some evidence in the homicide speeches that may tell us more about what kinds of statements were actually considered irrelevant by juries in practice. In search of greater specificity, then, we may start from the moments when speakers in the homicide courts explicitly acknowledge a potential contravention of the rule, either on their own part or that of their opponent.

This method can give us a clearer view of standards of relevance than externally imposed categories.

The speaker in Lysias 3 invokes the relevance rule to cushion his attempt to present information about Simon's previous violent behaviour:

> ἐβουλόμην δ᾽ ἂν ἐξεῖναί μοι παρ᾽ ὑμῖν καὶ ἐκ τῶν ἄλλων ἐπιδεῖξαι τὴν τούτου πονηρίαν, ἵνα ἠπίστασθε ὅτι πολὺ ἂν δικαιότερον αὐτὸς περὶ θανάτου ἠγωνίζετο ἢ ἑτέρους ὑπὲρ τῆς πατρίδος εἰς κίνδυνον καθίστη. τὰ μὲν οὖν ἄλλα ἐάσω· ὃ δ᾽ ἡγοῦμαι ὑμῖν προσήκειν ἀκοῦσαι καὶ τεκμήριον ἔσεσθαι τῆς τούτου θρασύτητος καὶ τόλμης, περὶ τούτου μνησθήσομαι. ἐν Κορίνθῳ γάρ, ἐπειδὴ ὕστερον ἦλθε τῆς πρὸς τοὺς πολεμίους μάχης καὶ τῆς εἰς Κορώνειαν στρατείας, ἐμάχετο τῷ ταξιάρχῳ Λάχητι καὶ ἔτυπτεν αὐτόν, καὶ πανστρατιᾷ τῶν πολιτῶν ἐξελθόντων, δόξας ἀκοσμότατος εἶναι καὶ πονηρότατος, μόνος Ἀθηναίων ὑπὸ τῶν στρατηγῶν ἐξεκηρύχθη. ἔχοιμι δ᾽ ἂν καὶ ἄλλα πολλὰ εἰπεῖν περὶ τούτου, ἀλλ᾽ ἐπειδὴ παρ᾽ ὑμῖν οὐ νόμιμόν ἐστιν ἔξω τοῦ πράγματος λέγειν, ἐκεῖνο ἐνθυμεῖσθε· οὗτοί εἰσιν οἱ βίᾳ εἰς τὴν ἡμετέραν οἰκίαν εἰσιόντες, οὗτοι οἱ διώκοντες, οὗτοι οἱ βίᾳ ἐκ τῆς ὁδοῦ συναρπάζοντες ἡμᾶς.
>
> (Lys. 3.44–6)

> I wish I were allowed to demonstrate his wickedness by referring to other events. That way, you would recognize that it would be far more just for him to be on trial for his life than to put other people in danger of exile. I shall omit everything else, but mention one episode I think you should hear about, as evidence of his outrageous audacity. At Corinth, arriving after the battle against the enemy and the expedition to Coronea, he had a fight with Laches his commander and beat him up. When the army marched out in full force, he was judged an insubordinate criminal and was the only Athenian to be publicly censured by the generals. I could tell you many other things about him, but since it is not in line with custom to mention irrelevant material in your court, please bear this point in mind: my opponents are the ones who enter our houses by force; they are the ones who pursue us; they are the ones who drag us off the street by force.[18]

At §§5–9, the speaker has detailed his earlier conflicts with Simon leading up to the fight that provoked the trial at hand. It cannot, therefore, be the discussion of previous behaviour in general that is considered irrelevant. The details of the ongoing feud between the two men are a legitimate part of the 'larger story' and provide background to the current case.[19] It must be that this specific detail about Simon's propensity to violence has nothing to do with his confrontational relationship with the speaker. It is purely a comment on character, intended to imply that Simon is a habitually violent person, and so would be likely to start a fight with the speaker. Indeed, when narrating the events of the previous disputes between the men, the speaker says that the jury 'should hear the offences

he committed against me personally'.[20] A clear contrast appears between previous affairs involving both litigants 'personally' – a part of the 'larger story' – and those involving only the opponent's previous behaviour, including those only obliquely referred to in Lysias' *praeteritio*. The latter, though framed as evidence for habitual violence on Simon's part, seems to speak mainly to defamation of character.[21] Lysias' explicit reticence when presenting this kind of character-based argument suggests that there is a danger that it would be considered irrelevant by the homicide court.[22] By comparison, we see examples of very similar digressions in the dikastic courts, for example, at Lysias 13.67–9, which make no reference to the relevance rule. We may, then, tentatively conclude that one category of irrelevant statement that formed part of the procedural difference between the homicide and the dikastic courts was evidence of character or behaviour with no direct connection to the case at hand or to the other litigants involved in that case. Of course, the fact that such behaviour was not directly relevant to the case did not mean that it had no persuasive power; Lysias certainly includes this detail because of the *ēthos* it creates for Simon and the anger it could provoke against him amongst the jurors. We should, however, take the orator at his word when he suggests that the jurors may have objected to its inclusion, and thus that his equivocation is necessary.

Lysias 7 provides a further example of irrelevant material:

> πατρίδος δὲ τοιαύτης ἐπ᾽ αἰσχίσταις στερηθεὶς αἰτίαις, πολλὰς μὲν ναυμαχίας ὑπὲρ αὐτῆς νεναυμαχηκώς, πολλὰς δὲ μάχας μεμαχημένος, κόσμιον δ᾽ ἐμαυτὸν καὶ ἐν δημοκρατίᾳ καὶ ἐν ὀλιγαρχίᾳ παρασχών. ἀλλὰ γάρ, ὦ βουλή, ταῦτα μὲν ἐνθάδε οὐκ οἶδ᾽ ὅ τι δεῖ λέγειν.
>
> (Lys. 7.41–2)

> I would be deprived, on charges that bring extreme shame, of the fatherland which is so dear to me, for which I have fought many battles on land and at sea, and have behaved well under both democracy and oligarchy. But I do not know, members of the council, what need there is to speak of these matters here.[23]

Again, the speaker checks his own digression into irrelevant territory as he starts to speak of the good that he has done for the city, particularly in the form of fighting to defend it. The speaker's hesitation here suggests that such statements were perhaps not welcome in the homicide courts. Once again, similar passages can be found scattered throughout the corpus of Athenian forensic oratory delivered in the dikastic courts, where it seems to have been acceptable to mention one's generally good character and devotion to the city, particularly when the charge had some public resonance, where such statements were arguably directly relevant to the trial.[24] It seems, then, that improving one's own character in ways unrelated to the crime at hand was not permissible in the homicide courts.

If these examples show irrelevant material, then we may tentatively conclude that *to pragma* in a homicide case is understood to refer to matters directly linked to the interaction between the litigants in that particular case. This may have varied slightly depending on the details of the case at trial, and was certainly not defined in law, but by the shared understanding of the jury on a case by case basis.[25] Background material could be provided as long as it referred specifically to the narrative of the case, including prior enmity or interactions between the specific parties involved in the current homicide dispute. Some standard rhetorical formulations often found in the *prooimion* and *epilogos* must also have been permissible, due to their appearances in the speeches without deference to the relevance rule, such as the speaker at Antiphon 1.1's assertion that he is young and inexperienced, or the *choregos*' praise of the laws at Antiphon 6.2. Potentially unacceptable statements would be those that had absolutely no bearing on the case beyond hypothetical assertions of patterns of patriotic or criminal behaviour. This particularly concerned character assassination involving behaviour of or towards people not concerned in the current trial, or positive actions performed by the speaker or his associates in the past. A difference can be seen in this regard from what was acceptable in the dikastic courts, where such material appears regularly without deference to the relevance rule.

One final category of material that should be addressed is explicit statements asking the jury to take pity on the litigant. These appear in a number of homicide speeches and other kinds of speeches from the homicide courts, and are not couched in language deferential to the relevance rule as are the statements seen above.[26] This would suggest that they were indeed admissible, as Lanni asserts.[27] In defence speeches, such as the three speeches of Lysias in which they are used, these statements appear towards the end of the speech and are probably intended to leave the jurors with a lasting sense of compassion towards the allegedly unjustly prosecuted speaker.[28] Although these appeals were not strictly concerned with the case at hand, Lanni is probably correct in her assertion that 'under the stress of such a serious charge litigants could not maintain composure and refrain from appeals for pity, and … such appeals were allowed a degree of forbearance'.[29] It does not seem likely that a statement of the potential effects of the outcome of the trial on the litigant's personal situation would be considered directly relevant to the case; as Aristotle notes in the *Rhetoric*, 'whether it is a large or small matter, whether just or unjust… it is necessary for the juror himself to distinguish, not to learn from the litigants'.[30] They did not provide evidence against guilt, even in the form of an *eikos* argument regarding good character. They merely referred to the potential consequences of a case, rather than the actual matters at hand. An argument for their relevance may hold if the jury were voting on a punishment rather than a verdict of guilt or innocence, but it seems from Draco's law that the punishments for various kinds of homicide were already prescribed by law.[31] Such appeals must simply be a standard rhetorical strategy, like appeals regarding the speaker's inexperience, which would aim to speak to the litigants' humanity. The appeals to pity that appear in Antiphon 1 (at §§3, 21 and 25) are slightly more

directed towards the matters at hand, as they encourage the jury to take pity on the dead man in punishing his killer. This would presumably be the predominant way in which appeals to pity were applied in speeches for the prosecution.

Now that some categories of irrelevant material have been tentatively identified, we may turn to look for the appearance of such material in the homicide speeches. It should be noted that the material identified in the rest of this chapter would almost certainly not have been seen as entirely irrelevant by the Athenian homicide courts. More irrelevant material could probably only be successfully employed using the tactics explored above, with explicit deference to the rules it contravened. Instead, the material explored here *verged on* irrelevance, seeking to achieve the same aims as outright character assassination or self-aggrandizement, while still maintaining enough of a link to either the case or, crucially, the way the case was delivered, to remain acceptable to the jury. As such, we should understand relevance as more of a sliding scale than a simple dichotomy: some statements would be acceptable only when presented through careful use of narrative techniques; others could only be employed with explicit acknowledgement of their irrelevance; and others still must have been off-limits completely. For the rest of this chapter, we are interested in the operation of various narrative techniques that allowed less relevant material to become more relevant to the case.

The relevance rule in the homicide courts would seemingly impose a limit on homicide rhetoric, forcing it to take a shape fundamentally different from rhetoric employed in the context of the dikastic courts. There are very few extant homicide speeches on which to test this theory. Those that do exist present problems for interpretation. Arguably, only three speeches that can have been delivered at homicide trials in the homicide courts survive: Antiphon 1 and 6, and Lysias 1. These are all relatively short, and only represent half of the speaker's case, as litigants in the homicide courts each delivered two speeches. It seems that all of the speeches that survive are the first speeches in the pair, as they all lay out the case in detail. The majority of each work focuses explicitly on the matter at hand in the case; it may be the case, however, that the second speech would be devoted to additional argumentation separate from the main argument, and would thus be a more likely location for less relevant material. The other extant speeches dealing with homicide (Antiphon 5 and Lysias 13) were delivered in the dikastic courts, and thus were not subject to the same relevance restrictions. We can assume that the relevance restrictions in the homicide courts were effective, at least in the case of homicide trials; Lysias 3 and 7 take place in the Areopagus but do not deal with homicide directly; both seem to transgress the boundaries of relevance to some degree, as seen above. Apart from certain examples already discussed here, scholars have asserted that homicide speeches largely keep to the point at hand, but if we look closely at the speeches, it is possible to find several points within the narratives of the speeches where statements that approach the boundary of relevance are employed.

For a forensic narrative to be persuasive, it often relies on rhetorical techniques which are tied closely to vividness, particularly *ekphrasis*, a highly detailed

description of people, places or events, and *enargeia*, which brings the described events 'before one's eyes.' Indeed, D'Angelo has noted 'the close relationship that obtains between description and narration';[32] an event cannot be adequately narrated without detailed descriptions of the events which occurred, the locations where they occurred and the people who were present. The more vivid these descriptions are, the more believable they become, and a believable (and thus persuasive) narrative is often the key to a successful forensic speech.[33] The types of details which contribute to vividness vary from case to case, and it is often the details that are less necessary to the actual narrative of events that help to create a more vivid background, and thus a more convincing narrative. It is these kinds of detail that provide the perfect opportunity for a speaker to present material that approaches the boundaries of relevance and achieves similar effects to more obvious irrelevant material. Particularly intricate narratives of this kind, which employ less relevant details in their pursuit of a more convincing story, appear in two of the three extant homicide speeches from the homicide courts: Antiphon 1 and Lysias 1.

Several scholars have noted the strongly tragic style of Antiphon 1.[34] The narrative is constructed with both conventions from and explicit references to tragedy, in order to activate an intense emotional response in the jurors of the kind usually found in the theatre. It is likely that the use of a conventional style of storytelling would also have helped to bolster what must have been an extremely weak case, referring to events that happened several years prior to the trial and for which the speaker seems to have little real evidence besides a deathbed accusation and the refusal of his opponents to hand over certain slaves for the *basanos* procedure. Indeed, the narrative is particularly vivid, certainly the most vivid in Antiphon, and even presents similarities to the messenger speeches in tragedy by which tragic deaths are most often relayed to the audience. It is this vividness that allows for details that approach the boundaries of relevance.

The speaker in Antiphon 1 alleges that the poisoning of his father and Philoneus occurred in Peiraeus, noting that the men had travelled there together but for different reasons: Philoneus to carry out a sacrifice, and the speaker's father to travel onwards to Naxos.[35] These details are necessary to the narrative, as they establish why both men were at the location where they were allegedly poisoned. However, the detail that Philoneus went to Peiraeus to perform a sacrifice not only establishes location, but also speaks to character. It paints him as a particularly pious and good man, and in doing so heightens the horror of his alleged murder at the hands of his companion's conniving wife. The scene must have also aimed to evoke a tragic sense of pity in the jury, encouraging them to seek vengeance for the man and punishment for the woman. Although these details might resemble the irrelevant attempts to improve the character of the victim or the speaker seen elsewhere in the forensic corpus, such as the discussion of previous good deeds performed by the speaker in Lysias 7, the tightly constructed tragic narrative will have made such details a relevant and indeed necessary part of the storytelling.

Antiphon's censure of the stepmother is not only achieved indirectly through the improvement of the victim's character, however; his narrative also explicitly attacks her by casting her in the tragic role of the murderess. In the midst of the narrative, he potently names the stepmother 'Clytemnestra'.[36] This is very clearly intended to tarnish her reputation irreparably in the eyes of the jury by invoking the well-known myth of the adulterous woman who premeditatedly kills her husband. The vivid metaphor forms a potent rhetorical crescendo and leads the jury into the most tragic section of the narrative, the poisoning scene itself. It is the tragic aspects of the narrative, then, which make this piece of deliberate character assassination relevant: a story of murder must be played out with all the necessary characters, and thus the jury would have had no objection to the inclusion of this comment.

Similar effects can be seen in Lysias 1, though played out in a rather different, almost comic style of narrative.[37] Lysias characterizes Euphiletus as a naïve and trusting husband, and he takes care to note how good his wife was at the beginning of their marriage.[38] This places the onus for the crime squarely on Eratosthenes and avoids the issue of his wife potentially colluding with either the adulterer or her husband in order to carry out the killing, which may have been an issue in the prosecution's case. It also denigrates Eratosthenes' character to suggest that he would seduce a woman of such good repute. Euphiletus' projected naivety additionally aims to make it seem improbable that his attack on Eratosthenes was planned. Once again, this does not quite approach the trope of irrelevant self-aggrandizement seen elsewhere in forensic oratory, but it does seek to characterize the speaker as a decent man, and not the sort of conniving character that would make and carry out a plot to kill an adulterer.

Apart from these more general points of characterization, though, the speech gives us perhaps our most interesting example of the inclusion in a narrative of a statement which approaches irrelevance. In Lysias 1, the fact of his wife's adultery with Eratosthenes is allegedly brought to Euphiletus's attention by an old woman, who reveals the seduction and Eratosthenes' identity. Euphiletus' quotation of the woman's speech includes the detail that Eratosthenes had apparently committed adultery with many other men's wives too.[39] The section of direct speech adds to the vividness of the narrative, as it presents the old woman as a more realized character and adds a dramatic flair to the revelation of the adultery. At first glance, the detail appears to be a relevant, even crucial part of Euphiletus' argument. From the very beginning of the speech, adultery is constructed as an act of *hubris*, an offence against Euphiletus's honour and his *oikos*.[40] As such, Lysias presents an argument that aims to shock the Athenian jurors, encouraging them to believe that Eratosthenes' death was both a fitting punishment for his actions and a necessary protection against the potential corruption of their own households. As we have seen in Lysias 3 among other speeches, establishing a pattern of behaviour on the part of one's opponent works both as a way to augment rhetorically the likelihood that they committed the act which the present trial is assessing, and to damage their *ēthos* by making them appear to be habitual fighters, seducers, etc.

The problem, though, is that the trial is not for Eratosthenes' adultery, but for his potentially unlawful killing at Euphiletus' hand. Lysias' elaborate argument would have the jury overlook this, creating a distracting narrative with strong emotional overtones that presents Euphiletus' homicide as an act of justice carried out by the law itself. But there is no indication in the speech that Euphiletus' prosecutors have questioned the fact that Eratosthenes committed adultery with Euphiletus' wife; rather, their quarrel appears to be with the manner in which the killing was carried out. There is some suggestion that Eratosthenes was not killed in the moment of discovery as the law allows, but rather that Euphiletus either plotted the killing beforehand or that Eratosthenes sought refuge at the hearth, a sacred act of supplication.[41] In a strictly legal sense, then, where Euphiletus' role is to answer the charge against him, Eratosthenes' habitual adultery has little relevance to the trial: there is no legal provision for killing a habitual adulterer in whatever manner one deems necessary. But for Lysias' rhetorical strategy, the detail is crucial, as it works to achieve a depth of anger and anxiety in the jurors that would justify Euphiletus' summary execution of Eratosthenes.

The detail of Eratosthenes' habit for adultery is, then, made relevant in two ways: both through its role in Lysias's constructed prosecution of Eratosthenes and through its presentation in direct speech. The information is not delivered directly by Euphiletus, but through the mouth of the old woman, as part of an 'accurate' account of the words she spoke when she revealed the adultery. It is, of course, highly likely that these words have been exaggerated, or even invented, by Lysias; the old woman's style of expression is elaborate and incorporates legal terminology, such as a reference to the *basanos* procedure.[42] But in placing them in the mouth of the old woman, Euphiletus is absolved from any potential blame for irrelevance; the speaker could hardly be at fault for the words of the people who happen to appear in his narrative. It is highly unlikely that anyone present at the trial would have questioned the inclusion of this detail, in spite of how closely it approaches the pattern of statements explicitly acknowledged as irrelevant elsewhere in the forensic corpus on homicide.

The relevance rule in the homicide courts had an effect on the content of the oratory delivered there, and orators had to be inventive and subtle in order to craft the most persuasive homicide speeches. We can find several instances that appear to be of borderline relevance in the homicide speeches, which show that orators still wished to achieve the effects that came from less relevant statements. In both Antiphon 1 and Lysias 1, the construction of a vivid story with an archetypal narrative structure calls for the inclusion of details that are less relevant to the case at hand, and yet absolutely necessary to construct a convincing narrative. Details of this sort could be a part of scene-setting or characterization, or could contribute to vividness through metaphor or direct speech. These narratives were intended to succeed based on their ability to provoke strong emotional responses from the jurors, and less relevant details were specifically tied to these kinds of emotional reactions. The fact of verbal delivery must have made these strategies even more successful: listeners would be unlikely to have the time to analyze fully

the manipulations of their emotions in the rhetoric. In spite of the more relaxed expectations regarding relevance in the dikastic courts, similar strategies were surely also employed there. If the jurors could be left with a vivid impression of events that also happened to contain details which assassinated the character of a speaker's opponent or increased his own reputation or that of his allies, it was likely to be especially persuasive.

Notes

1 Lipsius (1905–15: 918–19); see also Cohen (1995: 92–3); Rhodes (1998: 145).
2 Rhodes (2004); Lanni (2005: 127–8).
3 Lanni (2005: 113) largely discounts the existence of a relevance rule in the dikastic courts. By contrast, Harris (2009/10: 325–8, 2013: 114) has argued that both the dikastic courts and the homicide courts were held to strict standards of relevance. He successfully shows that some instances of seemingly irrelevant material can be shown to be relevant to the specific case at hand. He goes too far, though, in asserting that this means that all instances of apparently irrelevant material are in fact relevant. He also asserts that the mention of the dikastic relevance rule quoted in *Ath. Pol.* means that there was no irrelevance, implying that the existence of a rule means that it was followed at all times by all litigants. This seems to give the litigants, and the jurors, too much credit. It is easily believable that, if the rule did in fact exist, speakers would attempt to, and indeed succeed in, bending or breaking this rule in order to introduce irrelevant material that they believed would help their case.
4 See e.g., Fisher (2017); Griffith-Williams (2016); Rubinstein (2004); Sanders (2014: 79–99, 2016); Spatharas (2017).
5 Ant. 5.11–12; see also Pollux 8.117.
6 Arist. *Rhet*. 1.1.5–6.
7 Ant. 5.11; see below.
8 Lycurg. 1.11–13.
9 The issue of *bouleusis* ('plotting') in the homicide courts is contested. For the view that it was not a separate charge and that those accused of plotting a killing were tried under *dikē phonou*, see Gagarin (1990: 93). I, however, follow the view of MacDowell that *bouleusis* was a separate procedure and always tried at the Palladion, following the evidence of *Ath. Pol.* 57.3. The evidence for *bouleusis* being tried at the Areopagus is not particularly strong: Harpokration and the Suda suggest this was the case, though both sources also note the contrast to the evidence of *Ath. Pol.* and a lost speech of Isaeus. See also the argument of Harris (2006: 391–404), that a charge of *dikē phonou* would be used in cases where a plot resulted in death, as in Antiphon 1 and 6, and that *bouleusis* would be more likely to be used when a plot did not result in death. I would argue that this was certainly possible, but that the choice of charge would have depended on the strength of the prosecutor's case. I maintain that both Antiphon 1 and 6 were tried under charges of *bouleusis* at the Palladion.
10 On *ekphrasis* and *enargeia* in rhetoric, see Webb (2009) and in this volume.
11 A number of instances can be found of litigants exhorting the jury to shout out during the trial, for example, Dem. 19.75, 23.18–19, 41.17, 49.63. For more on dikastic *thorubos*, see Bers (1985) and Sato in this volume. For the role of bystanders in producing *thorubos*, see Lanni (1997: 188–9). It appears that there were bystanders in the homicide courts: Ant. 6.14 refers to bystanders who know of the events of the case (πολλοὶ τῶν περιεστώτων τούτων τὰ μὲν πράγματα ταῦτα πάντα ἀκριβῶς ἐπίστανται), and at Lys. 10.11–12 the speaker berates Theomnestus for not having gone to the Areopagus to learn about the use of law (οὐτοσὶ γάρ μοι δοκεῖ ὑπὸ ῥᾳθυμίας καὶ μαλακίας οὐδ'

εἰς Ἄρειον πάγον ἀναβεβηκέναι). Travlos (1967: 508) identifies evidence of posts at the site that he believes to be the Palladion; Lanni (2012: 5) takes this to be evidence for 'a series of poles connected with rope or light wooden barriers that would separate the spectators from the jury but would not prevent them from seeing and hearing the litigants'. This cannot be confirmed but is plausible. Lanni also notes that 'the requirement that all homicide trials be conducted under the open sky may have also made it easier for bystanders to hear the litigants'.

12 Trans. Lanni.

13 My translation.

14 Lys. 3.1–4, 7.1–3.

15 Lys. 1.1–5 presents a classic *prooimion*. The structures of Antiphon 1 and 6 are more unusual, but there are aspects of *prooimia* in the opening chapters of both speeches.

16 Lanni (2006: 99) also posits the *kēryx* as a potential enforcer of the rule, but writes: 'It is unlikely that the herald would be entrusted with the responsibility for determining when a litigant's arguments strayed from the point. If the herald did enforce the relevancy rule, he presumably took his cue from the reaction of the more experienced homicide judges'. It is unknown whether the *kēryx*, if he existed at the Areopagus, would in fact have been less experienced than the judges, as the post could have been professional rather than elected. If so, the *kēryx* may indeed have been able to make the decision for himself.

17 By comparison, in modern English law, there are provisions regarding the introduction of evidence in terms of relevance. The issue is most pertinent with regard to evidence of bad character. The Criminal Justice Act 2003 §98–113 establishes the provisions for introduction of evidence of bad character. For example, evidence of the defendant's bad character may only be introduced if:

(a) all parties to the proceedings agree to the evidence being admissible,

(b) the evidence is adduced by the defendant himself or is given in answer to a question asked by him in cross-examination and intended to elicit it,

(c) it is important explanatory evidence,

(d) *it is relevant to an important matter in issue between the defendant and the prosecution*,

(e) it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant,

(f) it is evidence to correct a false impression given by the defendant, or

(g) the defendant has made an attack on another person's character'. (§101, Criminal Justice Act 2003, my emphasis)

18 Trans. Todd.

19 Rhodes (2004: 141).

20 Lys. 3.5: ὅσα δὲ εἰς ἐμὲ αὐτὸν ἐξημάρτηκεν, ἡγοῦμαι ταῦθ' ὑμῖν προσήκειν ἀκοῦσαι.

21 The presentation of evidence for previous bad character towards the victim can also be seen in Ant. 1.3, with the speaker's assertion that the stepmother had previously attempted to kill the speaker's father, but again, this seems to speak to the larger story.

22 The digression is about the characters of Agoratus' brothers. He gives no indication that the men were working together, and appears to be attempting rhetorically to conflate the crimes of the brothers with those relevant to the trial. The eldest brother was executed for colluding with the enemy during the Sicilian expedition; the second for smuggling slaves between Athens and Corinth; and the third for clothes-snatching. The section is rhetorically framed as a point of comparison regarding the proposed punishment for Agoratus: if his brothers were each executed for a single offence, then Agoratus should certainly also face execution for his numerous crimes. The explicit intention is to provide precedent, but there is clearly another aspect at play. The offenders are closely related to Agoratus, so there is also a sense that he comes from a family

of habitual criminals, and that, therefore, it should not be doubted that he committed this crime.

23 Trans. Todd.

24 E.g., Ant. 5.77; And. 1.141, 147–9; Lys. 7.31, 18.3–4, 21, 24, 19.57–9, 62–3, 26.10; Isoc. 8.59–67; Isae. 2.42, 4.27–31; Dem. 45.85, 52.26; Hyp. 1.16–18. Harris (2013: 387–99) provides a comprehensive list of all of the mentions of public service in the orators that he has discovered, whether positive or negative, though his justification of all mentions as relevant is unconvincing. The passages we find in the dikastic courts tend to run to several chapters of the speech, e.g., Lys. 20.24–9, 21.1–11; Dem. 21.154–7.

25 Arist. *Rhet*. 1.1.3–6.

26 Lys. 3.48, 4.20, 7.41; Ant. 1.3, 21, 25.

27 Lanni (2005: 125–6) and (2006: 96–105).

28 For the rhetorical link between innocence and pity, see Konstan (2000). For more on the rhetorical workings of pity, see Johnstone (1999: 109–25).

29 Lanni (2006: 104).

30 Arist. *Rhet*. 1.1.6. The opposite is proposed by Lanni (2006: 104–5).

31 *IG* I^3 104.

32 D'Angelo (1998: 441).

33 On *enargeia* in the forensic speeches see recently O'Connell (2017: 124–7) and Webb in this volume.

34 Apostolakis (2007); Wohl (2010); Edwards (2017).

35 Ant. 1.16.

36 Ant. 1.17.

37 See e.g., Porter (1997); Todd (2000: 13–16); Usher (1965). On Lysias 1 see Wohl and Webb in this volume.

38 Lys. 1.6–7: ἐπειδὴ δέ μοι παιδίον γίγνεται, ἐπίστευον ἤδη καὶ πάντα τὰ ἐμαυτοῦ ἐκείνῃ παρέδωκα, ἡγούμενος ταύτην οἰκειότητα μεγίστην εἶναι· ἐν μὲν οὖν τῷ πρώτῳ χρόνῳ, ὦ Ἀθηναῖοι, πασῶν ἦν βελτίστη· καὶ γὰρ οἰκονόμος δεινὴ καὶ φειδωλὸς {ἀγαθὴ} καὶ ἀκριβῶς πάντα διοικοῦσα ('But from the moment my son was born, I began to have full confidence in her and placed everything in her hands, reckoning that this was the best relationship. In those early days, men of Athens, she was the best of women: a good housekeeper, thrifty, with a sharp eye on every detail'). (Trans. Todd)

39 Lys. 1.16: 'ἔστι δ'' ἔφη ''Ερατοσθένης Ὀῆθεν ὁ ταῦτα πράττων, ὃς οὐ μόνον τὴν σὴν γυναῖκα διέφθαρκεν ἀλλὰ καὶ ἄλλας πολλάς· ταύτην γὰρ {τὴν} τέχνην ἔχει' ('"It is," she continued, "Eratosthenes of the deme Oe who is doing this. He has seduced not only your wife but many others as well. He makes an art of it"'). (Trans. Todd)

40 Lys. 1.2.

41 Lys. 1.27. See e.g., Hom. *Od*. 14.159. On the legal ramifications of removing the suppliant for the sanctuary, see Naiden (2004: 76–80).

42 Lys. 1.16: 'ἐὰν οὖν λάβῃς τὴν θεράπαιναν τὴν εἰς ἀγορὰν βαδίζουσαν καὶ διακονοῦσαν ὑμῖν καὶ βασανίσῃς, ἅπαντα πεύσῃ' ('Get hold of your slave girl, the one who does the shopping and waits on you, and torture her [i.e., submit her to the *basanos* procedure]: you will discover everything'). (Trans. Todd.)

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Chapter 4

Social norms and the legal framework of forensic narratives in disputed inheritance claims

Brenda Griffith-Williams

Introduction: advocacy and storytelling in inheritance disputes

'Good advocates can make an implausible story sound credible, and even a poor orator will benefit from having a good story to tell'.[1] That sentence comes from a handbook on advocacy for modern English law students, but it could easily be adapted for the Athenian context by replacing the word 'advocates' with 'speechwriters'. The stories told by the opposing parties in disputed inheritance claims, ancient and modern, typically involve family quarrels, abusive and deceitful treatment of the elderly and rivalry between siblings, especially half-siblings who have only one parent in common. In the modern world, such stories are sometimes enjoyed as entertainment by the readers of tabloid newspapers and the viewers of television soap operas, and similar stories probably entertained the Athenians who gossiped in barbers' shops or at home with their wives. But when such stories, ancient or modern, are told in court, they are not intended merely to entertain the judge or jurors, or to distract their attention from the legal points at issue; they always support the legal case of the litigant by whom (or on whose behalf) they are told.

It is important for a litigant (or his advocate or speechwriter) to tell a credible story because most contested court cases involve disputes about facts rather than disputed interpretations of the law. In an adversarial trial each of the opposing parties presents his or her own version of the facts, and the judges or jurors hearing the case have to decide which version is true – or, at least, more credible, or more likely to be true.[2] They will be more inclined to believe a particular 'fact' if it is not merely asserted by one of the litigants but also corroborated by evidence. In a modern court, the evidence produced in support of an inheritance claim may include witness testimony, documents such as birth or marriage certificates, blood tests to prove a claimant's parentage and scientific document analysis to demonstrate the authenticity of a will. In the Athenian courts, where scientific evidence was not available and documentary records less reliable, there was inevitably more reliance on witness testimony. But evidence of whatever kind, even modern scientific evidence, is not necessarily conclusive. 'Facts' are open to interpretation,

and evidence to prove that something happened will not always explain *how* it happened, or, crucially, *why* it happened as it did, so a persuasive story is essential. In some cases a litigant can simply deny his opponent's story, but in others he may have to accept that some or all of the facts alleged by the opponent are true, even though they are damaging to his own case. If so, he may still find it possible to provide an alternative explanation of the facts that will put his own case in a more favourable light. Such alternative explanations, or 'counternarratives',[3] are a significant feature of the stories told in Athenian inheritance disputes.

In broad terms, any litigant (ancient or modern) claiming the estate of someone who has died will need to prove either that he or she is the nearest living relative of the dead person (the next of kin), or that the dead person named them in a valid will. The essential feature of Athenian inheritance law is that all legitimate sons had an absolute right to inherit a share of their father's estate. Under a law attributed to Solon,[4] as it was interpreted in the fourth century BC, a man with no natural legitimate son could adopt anyone he chose to be his son and heir, either during his lifetime (adoption *inter vivos*) or in a will to come into effect after his death (testamentary adoption), provided the adoptive father was not mentally incapable through madness, old age, drugs or illness, or acting under the influence of a woman or under compulsion or deprived of his liberty. If the dead man left no legitimate sons, natural or adopted, his property would go to his next of kin, following an order of succession set out in another law, probably also attributable to Solon.[5] In accordance with the principle of male precedence that governs this law, a woman could not inherit unless she was more closely related to the deceased than any of his surviving male relatives; and those related to the deceased on his father's side of the family (male or female) had priority over his relatives on his mother's side.

As the handbook on advocacy explains, a litigant whose story conforms to the expectations of the adjudicator(s) should have a relatively easy task in persuading them to believe him rather than his opponent:

> Everyone who sits in court to adjudicate on competing versions of the 'facts' in a case brings with them some prior knowledge and beliefs about how things work, what makes people act in certain ways or what they mean when they say certain things. If your client's story fits better into that wealth of knowledge and beliefs than your opponent's story, you have the advantage in persuading your audience to find the facts as you allege them to be. Alternatively, since you are likely to have to present your story as it is, rather than as you might like it to be … you may need to think about strategies to adopt in order to alter the mindset of your listener, so that your story becomes more acceptable and so more credible.[6]

This chapter considers five speeches from Athenian inheritance disputes, with a view to showing how the litigants' stories were shaped by the legal issues in each case, and what made such a story credible to a panel of Athenian dicasts (judges).

The expectations, or preconceptions, brought by the dicasts to the hearing of a disputed inheritance claim would have been based, at least in part, on their knowledge of their city's laws and customs, so they would certainly have expected a fellow Athenian to introduce his legitimate sons to his phratry and enrol them in his deme. Some modern scholars have suggested that Athenian dicasts were prejudiced against adoptions, and did not take wills seriously; one has even suggested that an Athenian will was seen as 'a tenuous document, without the clear legal force it has today'.[7] As I have argued more fully elsewhere, the weight of the evidence from the primary sources does not support such views.[8] Solon's law did not, of course, make adoption compulsory, but it did undoubtedly meet a social need: a typical Athenian would have wanted to avoid leaving his property to his collateral relations, by establishing a successor who would not only take over his property but also conduct the funeral and commemorative rituals and continue his *oikos* or line of descent. So adoption was the obvious choice for someone with no natural legitimate son. A man who needed help and support in old age would probably adopt in his lifetime, while a younger man who still had some prospect of fathering a son of his own might prefer testamentary adoption as a kind of insurance policy – especially if he was about to undergo some risk, such as military service. In either case the law gave him a completely free choice of whom to adopt, but in view of the importance attached by the Athenians to blood kinship, he would probably have chosen to adopt someone who was already closely related to him by blood.[9]

The Athenians' belief in the social value of adoption is eloquently expressed by Thrasyllus, the speaker of Isaeus 7:

> πάντες γὰρ οἱ τελευτήσειν μέλλοντες πρόνοιαν ποιοῦνται σφῶν αὐτῶν, ὅπως μὴ ἐξερημώσουσι τοὺς σφετέρους αὐτῶν οἴκους, ἀλλ᾽ ἔσται τις [καὶ] ὁ ἐναγιῶν καὶ πάντα τὰ νομιζόμενα αὐτοῖς ποιήσων· διὸ κἂν ἄπαιδες τελευτήσωσιν, ἀλλ᾽ οὖν ποιησάμενοι καταλείπουσι. καὶ οὐ μόνον ἰδίᾳ ταῦτα γιγνώσκουσιν, ἀλλὰ καὶ δημοσίᾳ τὸ κοινὸν τῆς πόλεως οὕτω ταῦτ᾽ ἔγνωκε· νόμῳ γὰρ τῳ ἄρχοντι τῶν οἴκων, ὅπως μὴ ἐξερημῶνται, προστάττει τὴν ἐπιμέλειαν.
>
> (Isae. 7.30)

> All men who are soon to die take precautions not to leave their families without heirs (literally 'not to leave their houses – *oikoi* – empty') and to ensure that there will be somebody to offer sacrifices and perform all the customary rites over them. And so even if they die childless they at least adopt children and leave them behind. And not only do they decide to do this for themselves, but the city too has publicly so decided, since by law it enjoins on the Archon the duty of ensuring that families are not left without heirs.[10]

As we shall see, the 'empty *oikos*' topos has a particular significance in Thrasyllus' case, but we cannot dismiss this passage as a merely rhetorical argument, because the existence of the law he mentions[11] shows that the continuity

of the *oikos* was indeed a matter of both private and public concern to his contemporaries. So an argument along these lines is likely to have been taken seriously by an Athenian court.

How to challenge a will (Isae. 9: *On the Estate of Astyphilus*)

In my view, then, the dicasts would have been receptive to the story told by Cleon, a fourth-century Athenian who may have been related to the fifth-century demagogue of the same name.[12] Cleon told the dicasts that his cousin Astyphilus, shortly before leaving Athens on military service, had made a will which he had left for safekeeping with his maternal uncle Hierocles. The will made Cleon's son the adopted son of Astyphilus. So, when news of Astyphilus' death reached Athens, Cleon took possession of the estate on behalf of his son. We do not have the text of Cleon's speech, but we can be reasonably confident that he exploited the 'empty *oikos*' topos, pointing out that Astyphilus had adopted his son because he wanted an heir to perform the religious ceremonies for him and keep his family alive. Unfortunately for Cleon, however, he was the second speaker at the trial, after his opponent, Astyphilus' half-brother, had delivered a speech written for him by the logographer Isaeus. Isaeus was an expert in inheritance law and, according to Dionysius of Halicarnassus, notorious for his ability to devise speeches for the worse cause (ἐπὶ τὰ πονηρότερα)[13] – perhaps the Athenian equivalent of 'making an implausible story sound credible'. So, by the time Cleon stood up to make his own speech, the dicasts were already likely to be prejudiced against him, and he was starting from a position of weakness rather than strength.

The basis of the case made by Isaeus for his client is a straightforward denial of Cleon's story: he says the document produced by Cleon is not Astyphilus' will but a forgery concocted by Hierocles and Cleon, and Astyphilus never made a will at all.

> καὶ πρὶν μὲν ληχθῆναι τοῦ κλήρου, ὦ ἄνδρες, εὖ εἰδὼς ὁ Ἱεροκλῆς ὅτι οὐδενὶ ἄλλῳ γίγνοιτο τὰ Ἀστυφίλου ἢ ἐμοί, ἐν μέρει ἑκάστῳ τῶν ἐκείνου ἐπιτηδείων προσῄει πωλῶν τὸ πρᾶγμα καὶ τοὺς οὐδὲν προσήκοντας πείθων ἀμφισβητεῖν, λέγων ὅτι θεῖος εἴη Ἀστυφίλῳ καὶ ἀποφανοίη διαθήκας ἐκεῖνον καταλελοιπότα, εἴ τις αὐτῷ κοινώσοιτο· ἐπειδὴ δὲ πρὸς Κλέωνα διωμολογήσατο καὶ τῶν τοῦ ἀδελφοῦ ἐμερίσατο, νυνὶ ὡς ἀληθῆ λέγων ἀξιώσει πιστεύεσθαι.
>
> (Isae. 9.24)

> Even before any claim was made to the estate, gentlemen, Hierocles knew full well that it would devolve to nobody else but me, and so he approached all the friends of the deceased in turn, peddling his scheme and trying to persuade people who had no right to the estate to make a claim. He said that he was Astyphilus' uncle and would declare that he had left a will, if anybody would become his partner; and now that he has made an agreement with Cleon and divided up my brother's property, he will ask to be believed as telling the truth.

But Isaeus knew that Cleon had a perfectly credible story to tell, and that a story about a conspiracy to forge a will might seem implausible to the dicasts – almost certainly less plausible than a story about a man who, just before setting off on a military campaign, had left a will adopting one of his closest relatives. In order to make his client's story credible, therefore, Isaeus also had to explain *why* Astyphilus did not adopt Cleon's son. His explanation comprises several strands of narrative, interspersed with argumentation throughout the speech, and not told in logical or chronological sequence. A full analysis of this highly complex speech would require a separate paper, so what follows is a simplified version.

The opening narrative includes an account of Astyphilus' funeral:

> καὶ οὕτω σφόδρα Κλέων οὑτοσὶ καὶ πρότερον καὶ νῦν οὐδένα ἄλλον τὸν κλῆρον ἡγεῖται ἕξειν ἢ αὑτὸν, ὥστ' ἐπειδὴ τάχιστα ἠγγέλθη Ἀστύφιλος τετελευτηκώς, τοῦ μὲν πατρὸς τοῦ ἐμοῦ ἀσθενοῦντος, ἐμοῦ δὲ οὐκ ἐπιδημοῦντος ἀλλὰ στρατευομένου, εἰς τὸ χωρίον ἐνεβάτευσε, καὶ εἴ τι ἄλλο ἐκεῖνος κατέλιπεν, ἅπαντα ἔφη τοῦ ὑοῦ τοῦ ἑαυτοῦ εἶναι, πρίν τι ὑμᾶς ψηφίσασθαι. ἐπεὶ δ' ἐκομίσθη τὰ ὀστᾶ τοῦ ἀδελφοῦ, ὁ μὲν προσποιούμενος πάλαι ὑὸς εἰσπεποιῆσθαι οὐ προὔθετο οὐδ' ἔθαψεν, οἱ δὲ φίλοι Ἀστυφίλου καὶ οἱ συστρατιῶται, ὁρῶντες τὸν πατέρα τὸν ἐμὸν ἀρρωστοῦντα, ἐμὲ δὲ οὐκ ἐπιδημοῦντα, αὐτοὶ καὶ προὔθεντο καὶ τἄλλα πάντα τὰ νομιζόμενα ἐποιήσαν καὶ τὸν ἐμὸν πατέρα ἀσθενοῦντα ἐπὶ τὸ μνῆμα ἤγαγον, εὖ εἰδότες ὅτι ἀσπάζοιτο αὐτὸν Ἀστύφιλος.
>
> (Isae. 9.3–4)

> And so strongly has Cleon here believed, both previously and now, that he and no-one else will possess the estate, that as soon as the news of Astyphilus' death was announced, while my father was ill and I was abroad on military service, he entered into possession of the land and said that anything else left by Astyphilus belonged entirely to his own son, without any adjudication by the court. But when my brother's remains were brought home, the one who claims to have been adopted long ago as his son did not lay them out or bury them, but Astyphilus' friends and fellow soldiers, seeing that my father was sick and I was abroad, themselves both laid out the remains and performed all the other customary rites, and they led my father, ill as he was, to the tomb, knowing full well that Astyphilus regarded him with affection.

This story about the funeral is significant, not merely because of its emotional appeal but also because social custom, as well as law, contributed to the expectations of the dicasts: although it was not a legal requirement, someone claiming to be the heir of a dead man would normally be expected to conduct the funeral – or, if he had not done so, to explain why. So this part of the story enables the speaker both to undermine Cleon's case by pointing out that Cleon and his son did not bury Astyphilus, and to make it clear that he would have done so himself if he had not been away from Athens on military service.

A later section of narrative describes a family quarrel that started in an earlier generation:

> Εὐθυκράτει γάρ, ὦ ἄνδρες, τῷ πατρὶ τῷ Ἀστυφίλου αἴτιος γενέσθαι λέγεται τοῦ θανάτου Θούδιππος ὁ Κλέωνος τουτουὶ πατήρ, αἰκισάμενος ἐκεῖνον διαφορᾶς τινος αὐτοῖς γενομένης ἐν τῇ νεμήσει τοῦ χωρίου, καὶ οὕτως αὐτὸν διατεθῆναι, ὥστε ἐκ τῶν πληγῶν αὐτὸν ἀσθενήσαντα οὐ πολλαῖς ἡμέραις ὕστερον ἀποθανεῖν. … (19) ὡς δέ, ὅτε ἀπέθνησκεν Εὐθυκράτης ὁ πατὴρ Ἀστυφίλου, ἐπέσκηψε τοῖς οἰκείοις μηδένα ποτὲ ἐᾶσαι ἐλθεῖν τῶν Θουδίππου ἐπὶ τὸ μνῆμα τὸ ἑαυτοῦ, τούτων ὑμῖν τὸν ἔχοντα τὴν τηθίδα τοῦ ᾽Αστυφίλου μάρτυρα περέξομαι. … (20) Ἀκούων τοίνυν ὁ ᾽Αστύφιλος καὶ τούτου καὶ τῶν ἄλλων προσηκόντων εὐθέως ἐκ παιδίου, ἐπειδὴ τάχιστα ἤρχετο φρονεῖν, οὐδὲ πώποτε διελέχθη Κλέωνι, ἀλλὰ πρότερον ἐτελεύτησεν, οὐχ ἡγούμενος ὅσιον εἶναι, τοιαύτην αἰτίαν ἔχοντος Θουδίππου περὶ τὸν αὐτοῦ πατέρα, τῷ ἐκείνου ὑεῖ διαλέγεσθαι.
>
> (Isae. 9.17, 19–20)

> Thudippus, the father of Cleon here, is said to have been responsible, gentlemen, for the death of Astyphilus' father Euthycrates: he assaulted him when a dispute arose between them over the division of their land, and Euthycrates suffered so badly that he fell ill from the blows and died a few days later. … [To] prove that when Astyphilus' father Euthycrates was dying he solemnly charged his relatives never to allow any of Thudippus' family to approach his tomb, I will produce as a witness of this the husband of Astyphilus' aunt. … Astyphilus, then, heard about these things while still only a child both from [Hierocles] and from his other relatives, and from the moment he was old enough to understand he never spoke to Cleon, and until the day he died he considered it impious, when Thudippus bore such responsibility for his father's death, to speak with the man's son.

This part of the story is clearly intended to convince the dicasts that Astyphilus would not have adopted a son from Cleon's branch of the family, but Isaeus still had to overcome their likely prejudice against his client, because they would not have expected Astyphilus to enjoy a close relationship with a half-sibling by the same mother.[14] An Athenian widow was expected to remarry as soon as possible, and any children of her previous marriage would normally remain in their father's *oikos* and inherit his estate. So, in normal circumstances, half-siblings by the same mother would be brought up in different households and have little contact with one another or with their stepfather. In this case, however, the speaker explains that his father, Theophrastus, the second husband of Astyphilus' mother, was also Astyphilus' guardian. The two boys were brought up and educated together, became close friends and never quarrelled. Theophrastus, moreover, managed Astyphilus' paternal estate well, and remained on terms of close affection with

him. This makes it all the less likely that Astyphilus would have adopted Cleon's son; in fact, he would have been only too happy for his property to go to his beloved half-brother. In the light of all this it is obvious, according to the speaker, that the supposed will cannot be genuine. But just in case the dicasts still do not believe his story about the forged will, he changes tactics, right at the end of the speech, from direct denial to alternative explanation: if Astyphilus really did make a will adopting Cleon's son, he cannot have been in his right mind, so the will is not legally valid.

'Pathetic and demeaning stories about old people' – and scheming women

This change of tactics reminds us that there is more than one way of challenging the validity of a will (or, in the Athenian context, an adoption). In the modern Anglo-American world, allegations of fraud or forgery are relatively rare, as perhaps they were in classical Athens, too.[15] The most common grounds for attacking a will are lack of capacity or undue influence: in other words, a will, even if genuinely written by the testator, can be found to be legally invalid because the testator was either not of sound mind or was unfairly persuaded by someone who would benefit from the will. Such claims often involve what the American legal historian Lawrence Friedman calls 'pathetic and demeaning stories about old people'.[16] Typically, as in a nineteenth-century case described by Friedman, testimony on opposing sides is 'as different as night and day': one claimant to the estate of Isaac Banta described the old man as 'an exceedingly shrewd businessman', but according to the other side he was 'crazy as a loon'.[17]

We can find similarly pathetic and demeaning stories about old people, and the unscrupulous relatives or friends who exploit their vulnerability, in some of the speeches from Athenian inheritance disputes. A characteristically Athenian slant on such stories is that they sometimes involve the influence of a scheming and deceitful woman, reflecting the Athenians' suspicion of female irrationality and duplicity (which underlay the provision in Solon's law invalidating a will made under the influence of a woman). The first such case, Isaeus 8, concerns the estate of Ciron, another Athenian who, like Astyphilus, might have been expected to adopt a son – although in this case Isaeus has to explain why he did *not* do so. According to his client, who claims the estate as the son of Ciron's daughter, Ciron had been married twice. His daughter by his first wife was already dead, as were his two sons by his second wife, so the daughter's sons were his only surviving descendants, and many, if not most Athenians would have thought it natural for him to adopt one of these grandsons after his sons had died. The speaker's opponent, Ciron's nephew, was the first to speak at the trial, and it is clear that he has played up to this expectation. The basis of his case was that the speaker was not entitled to inherit from Ciron because his mother was not Ciron's legitimate daughter; and that explains why Ciron did not adopt one of his grandsons: they were not eligible for adoption, because they were illegitimate.

Isaeus, clearly, could not deny the fact that his client had not been adopted by Ciron, so he had to provide an alternative explanation, which he does as part of an elaborate story about a conspiracy between Ciron's second wife and her brother, the notorious Diocles of Phlya, to take control of Ciron's property and ensure that none of it goes to his family from his first marriage. The legal opponent, Ciron's nephew, according to this story, is merely a pawn in the hands of Diocles, who is the real villain. As Isaeus explains:

> σύμπαντα δὲ ὅσα φανερὰ ἦν, πλέον ἢ ἐνενήκοντα μνῶν· χωρὶς δὲ τούτων δανείσματα οὐκ ὀλίγα, ἀφ' ὧν ἐκεῖνος τόκους ἐλάμβανε. τούτοις Διοκλῆς μετὰ τῆς ἀδελφῆς πάλαι ἐπεβούλευεν, ἐπειδὴ τάχιστα οἱ παῖδες οἱ Κίρωνος ἐτελεύτησαν. ἐκείνην μὲν γὰρ οὐκ ἐξεδίδου δυναμένην ἔτι τεκεῖν παῖδας ἐξ ἑτέρου ἀνδρός, ἵνα μὴ χωρισθείσης περὶ τῶν αὐτοῦ βουλεύσαιτο καθάπερ προσῆκεν, ἔπειθε δὲ μένειν φάσκουσαν ἐξ αὐτοῦ κυεῖν οἴεσθαι, προσποιουμένην δὲ διαφθείρειν ἄκουσαν, ἵν' ἐλπίζων ἀεὶ γενήσεσθαι παῖδας αὐτῷ μηδέτερον ἡμῶν εἰσποιήσαιτο υἱόν.
>
> (Isae. 8.35–6)

> Altogether [Ciron's] visible property was worth more than ninety minas, and apart from this, he had large sums on loan on which he received interest. Diocles began plotting with his sister for this property a long time ago, as soon as Ciron's sons died. He did not try to find her another husband, even though she was still capable of bearing children to one, in case, if she were separated from Ciron, he should plan to dispose of his property in the proper way; but he kept urging her to stay with him by claiming she thought she was pregnant by him and then pretending she'd accidentally miscarried, so that he was continually hoping he would have children and would not adopt either of us as his son.

Another story about a vulnerable old man deceived by a scheming woman is told in Isaeus 6, which was delivered by a supporting speaker on behalf of the claimant Chaerestratus. His opponent, Androcles, has put forward two young men as legitimate sons of Euctemon by a second wife, and the speaker needs to persuade the dicasts that they are not in fact who they claim to be. Androcles has produced witness testimony showing that Euctemon had introduced the older of these young men to his phratry, and although that was not absolute proof of his status, the dicasts would have taken it as strong *prima facie* evidence of his legitimacy; the equivalent, in modern legal proceedings, would be a birth certificate showing the name of the father. Isaeus' client was evidently not in a position to deny the awkward fact that the introduction had taken place, so he had to produce an alternative story to explain who the impostors really were and *why* Euctemon had behaved in such an irrational (and indeed illegal) way in introducing one of them to his phratry.

At the age of 96, according to Isaeus' client,[18] Euctemon became infatuated with Alce, a former slave and prostitute who managed his apartment block in the Peiraeus, and who had two sons, supposedly by a freedman called Dion. Eventually Euctemon left his wife and family and went to live permanently with Alce, under whose influence he became so confused by drugs or disease that she was able to persuade him to introduce one of her sons to his phratry under his own name. At first Euctemon could not complete the introduction, because one of his legitimate sons, Philoctemon, objected. But then Euctemon threatened to remarry and father more sons; and eventually, under pressure from other family members, Philoctemon reluctantly agreed to let Euctemon introduce one of Alce's sons to the phratry.

The case of Mantitheus, the speaker of Dem. 39 and [Dem.] 40, and his half-brother Boeotus, provides another story about a mother who uses deception and trickery in support of her sons, in a dispute with their half-brother by a different mother. Mantitheus presents himself as the legitimate son of Mantias and his wife, the daughter of Polyaratus, while Boeotus and his brother Pamphilus are the sons of a woman called Plangon with whom Mantias 'had some sort of relationship'. Strictly speaking neither of these two speeches emanates from an inheritance claim, but they are part of a long-running dispute between Mantitheus and Boeotus.

The problem for Mantitheus, as for Chaerestratus in Isaeus 6, is that Mantias publicly acknowledged Boeotus as his legitimate son by introducing him to his phratry. Mantitheus cannot deny this fact which, as he explains, has already had serious consequences for him because when Mantias died, he was forced to share the estate with Boeotus and Pamphilus. So, again like the speaker of Isaeus 6, he has to provide an alternative explanation of the inconvenient fact. It is not clear from the story he tells whether Plangon was Mantias' mistress, or whether she was at some stage formally married to Mantias, who suspected her of producing the two sons from an adulterous relationship. In any event, Mantias did not recognize them as his legitimate sons while they were children, but the adult Boeotus took legal action against him in an attempt to make him acknowledge them. Then, as Mantitheus explains:

> ὁ πατὴρ δὲ (πᾶσα γὰρ εἰρήσεται ἡ ἀλήθει', ὦ ἄνδρες δικασταί) ἅμα μὲν φοβούμενος εἰς δικαστήριον εἰσιέναι, μή τις οἶ' ὑπὸ πολιτευομένου ἑτέρωθί που λελυπημένος ἐνταῦθ' ἀπαντήσειεν αὐτῷ, ἅμα δ' ἐξαπατηθεὶς ὑπὸ τῆς τουτουὶ μητρός, ὁμοσάσης αὐτῆς ἦ μήν, ἐὰν ὅρκον αὐτῇ διδῷ περὶ τούτων, μὴ ὀμεῖσθαι, τούτων δὲ πραχθέντων οὐδὲν ἔσεσθαι ἔτ' αὐτοῖς, καὶ μεσεγγυησαμένης ἀργύριον, ἐπὶ τούτοις δίδωσι τὸν ὅρκον. ἡ δὲ δεξαμένη, οὐ μόνον τοῦτον, ἀλλὰ καὶ τὸν ἀδελφὸν τὸν ἕτερον πρὸς τούτῳ κατωμόσατ' ἐκ τοῦ πατρὸς εἶναι τοὐμοῦ. ὡς δὲ τοῦτ' ἐποίησεν, εἰσάγειν εἰς τοὺς φράτερας ἦν ἀνάγκη τούτους καὶ λόγος οὐδεὶς ὑπελείπετο.
>
> (Dem. 39.3–4)

> I shall tell you the whole truth, judges. My father was afraid to go to court in case he was confronted there by someone with a grievance against him from another context, as happens in politics. He had also been tricked by Plangon, who had of her own accord promised that if he offered her an oath on the matter, she would decline it, and that would be the end of it. She had him deposit some money with a third party, and on these conditions he offered her the oath. But then she accepted the challenge, and swore that my father was the father of Boeotus, and of his brother as well, her other son. Once she had done this, the boys *had* to be introduced to the phratry and there was nothing he could say or do about it.[19]

The other side of the coin: a sane and rational decision

In the speeches considered so far, the litigants appear to have started at a disadvantage, because each of them needed to discredit an apparently credible story which his opponent had either already told or was going to tell. Ciron's grandson had to explain why Ciron had *not* adopted either him or his brother, while Astyphilus' half-brother had to undermine the story that Astyphilus *did* adopt his cousin's son. The other speakers (Chaerestratus' friend in Isaeus 6 and Mantitheus in the Demosthenic speeches) had to explain why Euctemon and Mantias, respectively, had introduced someone to his phratry who was not really his legitimate son. In the final speech in this survey, Isaeus 7, the speaker, Thrasyllus, appears at the outset to have a strong case. He supports his claim to have been adopted *inter vivos* by his uncle Apollodorus, with a plausible explanation:

> Ἀπολλοδώρῳ γὰρ ἦν υὁς, ὃν ἐκεῖνος καὶ ἤσκει καὶ δι' ἐπιμελείας εἶχεν, ὥσπερ καὶ προσῆκον ἦν. ἕως μὲν οὖν ἐκεῖνος ἔζη, διάδοχον τῆς ουσίας ἤλπιζεν αὐτὸν καταστήσειν τῆς ἑαυτοῦ· ἐπειδὴ δὲ ἐτελεύτησε νοσήσας τοῦ ἐξελθόντος ἐνιαυτοῦ μηνὸς Μαιμακτηριῶνος, ἐπὶ τοῖς παροῦσιν ἀθυμήσας καὶ τὴν ἡλικίαν τὴν ἑαυτοῦ καταμεμψάμενος οὐκ ἐπελάθετο ὑφ' ὧν καὶ ἐξ ἀρχῆς εὖ πεπονθὼς ἦν, ἀλλ' ἐλθὼν ὡς τὴν ἐμὴν μητέρα ἑαυτοῦ δὲ ἀδελφήν, ἣν περὶ πλείστου πάντων ἐποιεῖτο, λαβεῖν ἠξίωσέ με ὑὸν καὶ ᾔτησε καὶ ἔτυχεν.
>
> (Isae. 7.14)

> Apollodorus had a son he educated and cared for, as was only fitting. While this boy was alive, he hoped to make him heir to his property, but when he fell and died in Maimakterion last year, Apollodorus, depressed by all his troubles and complaining about his advanced age, did not forget those who had treated him well from the start, but came to my mother, his own sister whom he valued above all others, and said he thought he should adopt me; he asked her permission and received it.

So Apollodorus, unlike Ciron in the same predicament, did what his fellow Athenians would have expected of him: he adopted a son, so that he would not

leave his family without an heir but would have someone to offer sacrifices for him and perform all the customary rites. Thrasyllus, as we saw from 7.30 (cited above, p. 57), appeals directly to that expectation. He also produces witnesses to prove that Apollodorus introduced him to his phratry as his adopted son. Moreover, Thrasyllus, on his own account, was a particularly suitable candidate for adoption: Apollodorus saw that he was a dutiful son to his natural parents, and an exemplary citizen who had undertaken all the public offices appropriate for one of his age.

Thus far, Thrasyllus' story seems eminently persuasive, but there are some weaknesses in his case which his opponent clearly tried to exploit. First, Apollodorus did not complete the formalities of the adoption in his lifetime: after introducing Thrasyllus to his phratry, he died before he could enrol him as a member of his deme; so (according to Thrasyllus and his witnesses) the enrolment was carried out by Apollodorus' fellow demesmen acting on Apollodorus' instructions. The second, and arguably more significant weakness is that Thrasyllus was related to Apollodorus only through his mother, who was not even Apollodorus' full sister but a half-sister with the same mother. As we saw in the case of Astyphilus, half-siblings with the same mother would not normally have been expected to have a close relationship; so, while the dicasts would have found Apollodorus' decision to adopt a son perfectly rational, they might well have wondered why he chose Thrasyllus, rather than a relation on his father's side of the family.[20]

Thrasyllus' claim to the estate was, in fact, challenged by one of Apollodorus' paternal relations: a daughter of his father's brother Eupolis, who was represented in court by her husband, Pronapes. We do not have the text of Pronapes' speech, but he probably said that after the death of Apollodorus' son, he and his wife had offered to let him adopt one of their own two sons. In the face of the testimony produced by Thrasyllus they could not deny that Apollodorus had introduced Thrasyllus to his phratry, or that the demesmen had enrolled him on their register, but they almost certainly argued that the adoption was invalid under Solon's law because Thrasyllus was acting under the influence of a woman, his half-sister, who took advantage of him while he was old and vulnerable. And they may perhaps have added that it was Thrasyllus himself, not Apollodorus, who instructed the demesmen to enrol him. In Isaeus 7, then, we have the reverse of the stories about confused and gullible old men in Isaeus 6 and 8, and of the stories in Isaeus 6 and Demosthenes 39 about a man who was deceived by a scheming woman into illegally introducing her son to his phratry. Apollodorus, according to Thrasyllus, was not confused or gullible, and nor was he tricked by his sister; his adoption of Thrasyllus was the act of a perfectly sane and rational man.

To make this point, Thrasyllus tells two stories about relations within the family, beginning, like Astyphilus' half-brother in Isaeus 9, with a family quarrel that originated in an earlier generation:

> Εὔπολις γὰρ, ὦ ἄνδρες, καὶ Θράσυλλος καὶ Μνήσων ἀδελφοὶ ἦσαν ὁμομήτριοι καὶ ὁμοπάτριοι, τούτοις οὐσίαν ὁ πατὴρ κατέλιπε πολλήν, ὥστε καὶ λητουργεῖν ἕκαστον ἀξιοῦσθαι παρ' ὑμῖν. ταύτην ἐκεῖνοι τρεῖς ὄντες

ἐνείμοντο πρὸς ἀλλήλους. τούτων τὼ δύο ἐτελευτησάτην περὶ τὸν αὐτὸν χρόνον, ὁ μὲν Μνήσων ἐνθάδε ἄγαμος καὶ ἄπαις, ὁ δὲ Θράσυλλος τῶν ἐν Σικελίᾳ καταλεγεὶς τριηράρχων, καταλιπὼν υὸν Ἀπολλόδωρον τὸν ἐμὲ νῦν ποιησάμενον. Εὔπολις οὖν μόνος αὐτῶν λειφθεὶς οὐ μικρὰ ἀπολαῦσαι τῶν χρημάτων ἠξίωσεν, ἀλλὰ τὸν μὲν Μνήσονος κλῆρον, οὗ καὶ ᾽Απολλοδώρῳ προσῆκε τὸ ἡμικλήριον, πάντα εἰς αὑτὸν περιεποίησε, φάσκων αὐτῷ δοῦναι τὸν ἀδελφόν, αὐτὸν δ᾽ ἐκεῖνον οὕτω διῴκησεν ἐπιτροπεύων ὥστε τριῶν ταλάντων δίκην ὀφλεῖν. Ἀρχέδαμος γὰρ ὁ πάππος οὑμός, ἐξ οὗ τὴν μητέρα ἔσχε τὴν Ἀπολλοδώρου, τήθην δὲ ἐμήν, ὁρῶν αὐτὸν πάντων ἀποστερούμενον τῶν χρημάτων, ἔτρεφέ τε αὐτὸν παῖδα ὄνθ᾽, ὡς ἑαυτὸν καὶ τὴν μητέρα κομισάμενος, ἄνδρί τε γενομένῳ συνηγωνίσατο καὶ εἰσέπραξε τὸ ἡμικλήριον ὧν Μνήσων κατέλιπεν ὅσα τε ἐκ τῆς ἐπιτροπῆς ἀπεστέρησε, δίκας δύο ἑλών, καὶ τὴν οὐσίαν ἐποίησε κομίσασθαι τὴν αὐτοῦ πᾶσαν. καὶ διὰ ταῦτα Εὔπολις μὲν καὶ Ἀπολλόδωρος ἐχθρῶς ἔχοντες τὸν πάντα χρόνον διετέλεσαν πρὸς ἀλλήλους, ὁ δὲ πάππος οὑμὸς καὶ Ἀπολλόδωρος φιλικῶς, ὥσπερ προσῆκε.

(Isae. 7.5–8)

Eupolis, gentlemen, Thrasyllus, and Mneson were brothers with the same mother and father. Their father left them with a large fortune, which allowed each of them, in your view, to perform public services for you. The three divided this fortune among themselves. Two of them died at about the same time, Mneson in Athens, unmarried and childless, Thrasyllus in Sicily where he served as a trierarch, leaving behind a son, Apollodorus, who has now adopted me. Eupolis, the sole survivor of the three, decided that he should enjoy not just a small part of the fortune, but he appropriated the whole of Mneson's estate, half of which belonged to Apollodorus, alleging that his brother had given it to him. Moreover, as guardian he managed Apollodorus' property so badly that he was condemned to pay him three talents. This was because my grandfather Archedamus, after marrying Apollodorus' mother, my grandmother, saw him being deprived of all his money and brought him up as his own child. And when Apollodorus became an adult, he helped him go to law and secured the half-share of the estate Mneson had left him and whatever Eupolis had embezzled as guardian, winning two lawsuits, and so enabled him to recover his whole fortune. Consequently, Eupolis and Apollodorus were always hostile to one another, while my grandfather and Apollodorus naturally were close friends.

Like the speaker of Isaeus 9, Thrasyllus could expect the dicasts to agree that no Athenian would have wanted to leave his property to the child of a bitter enemy. But he also has another story, about the behaviour of his opponent herself and her sister, to explain why Apollodorus would not have wanted this woman in particular to inherit his estate.[21] This story, again, exploits the 'empty *oikos*' topos:

ἐκείνῳ δὲ πρόδηλον ἦν ὅτι εἰ καταλείψει τὸν κλῆρον ἐπὶ τούτοις, ἔρημον ποιήσει τὸν οἶκον, τί προορῶντι; ταύτας τὰς ἀδελφὰς τὸν μὲν Ἀπολλοδώρου

τοῦ ἀδελφοῦ κλῆρον ἐχούσας, ἐκείνῳ δ' οὐκ εἰσποιούσας ὄντων αὐταῖς παίδων, καὶ τοὺς μὲν ἄνδρας αὐτῶν τὴν γὴν, ἣν ἐκεῖνος κατέλιπε, καὶ τὰ κτήματα πέντε ταλάντων πεπρακότας καὶ τὸ ἀργύριον διανειμαμένους, τὸν δὲ οἶκον αἰσχρῶς οὕτω καὶ δεινῶς ἐξηρημωμένον. ὃς δὲ ταῦτ' ἤδει τὸν τούτων ἀδελφὸν πεπονθότα, πῶς ἂν προσεδόκησεν αὐτός, εἰ καὶ φίλος ἦν, τυχεῖν τῶν νομιζομένων ὑπ' αὐτῶν, ἀνεψιὸς ὢν ἀλλ' οὐκ ἀδελφὸς αὐταῖς;

(Isae. 7.31–2)

Now it was quite clear to Apollodorus that if he left his estate in the control of my opponents, he would leave his family without heirs. For what did he see before him? That these sisters of Apollodorus [the younger] inherited their brother's estate but did not give him a son for adoption, even though they had children, that their husbands sold the land he left and his possessions for five talents and split the money, and that his house was thus left shamefully and disgracefully without heirs. Since Apollodorus knew their brother had been treated in this way, how could he himself have expected, even if he was on friendly terms, to receive the customary rites from them, when he was only their cousin and not their brother?

Conclusion

If we try to assess the plausibility of these stories, and their relevance[22] to the legal issues, we need to be aware that our cultural values and assumptions – our experience of life – are not the same as those of the fourth-century Athenians. In any dispute about a will, ancient or modern, evidence that one of the beneficiaries was an enemy of the testator would, though not in itself conclusive, raise questions about the validity of the will. Evidence of a quarrel dating back to earlier generations of the family would probably not be taken into account by a modern court, but it would certainly be accepted as relevant in a culture where enmity is inherited, as it was in classical Athens.[23] As to plausibility, we may find some of the stories far-fetched: how likely is it that an old man could be deceived by his wife into thinking he could still father sons, or be persuaded by a scheming mistress to treat a child of former slaves as his own legitimate son? The Athenian dicasts, too, may have had their doubts, especially if the stories they heard in court had no parallels in their own experience or that of their friends and neighbours. They would not have dismissed such stories, which played to their deeply rooted suspicions about women, as completely implausible, but deciding which of two opposing stories to believe was a question involving delicate judgement, not an easy or straightforward task.

The dicasts were bound by their oath to make their decisions 'in accordance with the law' (*kata tous nomous*), so, if they did their job conscientiously, they had to decide on the basis of the legal issues: did Astyphilus make a valid will adopting Cleon's son, or was the 'will' produced by Cleon a forgery? Was Apollodorus' adoption of his nephew Thrasyllus legally valid, or was he unduly influenced

by his sister? Was the speaker of Isaeus 8 really a legitimate grandson of Ciron? Were the boys Euctemon and Mantias introduced to their respective phratries really their legitimate sons, or not? If they were conscientious about applying the law to the case of Astyphilus' estate, for example, they could not decide in favour of Astyphilus' half-brother simply because they disliked Cleon (perhaps for political reasons); they would have to be persuaded that Astyphilus really had not left a valid will. They could not give Apollodorus' estate to Thrasyllus merely because they were afraid Pronapes and his wife would waste it; they had to believe that Apollodorus was of sound mind when he adopted Thrasyllus, and not acting under the influence of his sister. But even if they did observe the oath conscientiously – and we cannot, of course, be sure that all of them did – that is not to say that emotional or irrational factors played no part in their decision-making; complete certainty on any of these questions was unattainable, so their decisions had to be based on probability – and on the persuasive skills of the speakers and speechwriters whose stories they heard.

Notes

1 Inns of Court School of Law (2006: 98).
2 The procedure used in the Athenian courts to determine disputed inheritance claims, the *diadikasia*, was formally non-adversarial, and the litigants were on an equal footing. But in practice, as I have argued elsewhere (Griffith-Williams (2013: 6–7)) the strategies of the competing parties in a disputed inheritance claim were often very similar to those of the prosecutor and defendant in adversarial litigation.
3 On the use of counternarratives in Athenian litigation more generally, see Johnstone (1999: 56–9).
4 Cited at [Dem.] 46.14.
5 Cited at [Dem.] 43.51 and discussed at Isae. 11.1–3.
6 Inns of Court School of Law (2006:97). Cf. Gagarin (2003: 203) on competing stories in ancient and modern law: 'These stories are then judged by judges and jurors who do not know which, if either, is true. … In the end, one has to make a judgement, and in doing so, in law as in life, one has to rely not just on whether the story conforms to the facts but also on its plausibility (what the Greeks called *eikos*), and this depends in large part on its artistry …. In addition, we judge stories according to their conformity with our own values and beliefs, so that the art of good storytelling is also in part a matter of matching one's story to the traditions and beliefs of one's audience'. It has sometimes been argued, for example, by Lanni (2009), that the Athenian courts decided cases in accordance with 'extra-statutory norms', or that they functioned as an agency for the enforcement of social norms rather than the administration of justice according to the law (Lanni 2016). My approach (like that of Gagarin) is fundamentally different because I do not see social norms, or stories based on them, as incompatible with justice in accordance with the law. On 'relevance' and the narratives of speeches delivered in the context of homicide cases, see Plastow in this volume.
7 Wohl (2010: 259).
8 Griffith-Williams (2012: 149–50) and (2013: 13–15).
9 Cf. Rubinstein (1993: 78).
10 All translations from the speeches of Isaeus are based on Edwards (2007) with some adjustments.

11 Cited at [Dem.] 43.75.
12 Bourriot (1982).
13 DH, *Isae.* 4.
14 Cf. Griffith-Williams (2014: 93).
15 Cf. Griffith-Williams (2013: 10–12).
16 Friedman (2009: 89).
17 Friedman (2009: 1–2).
18 This paragraph summarizes the narrative at Isae. 6.18–24.
19 Trans. Waterfield (2014) with some adaptations.
20 Cf. Griffith-Williams (2014: 97).
21 A similar pattern of family relations is narrated in Isoc. 19 *Aegineticus*, the only speech from a non-Athenian court case in the corpus of the Attic orators. The speaker claims to have been adopted by Thrasylochus, a long-standing friend of his family whom he nursed devotedly through his last illness, while his opponent, a half-sister of Thrasylochus, neglected him.
22 I have argued elsewhere (Griffith-Williams, 2012) that evidence of matters, such as family quarrels, typically used in Athenian inheritance speeches, is not (as some scholars have suggested) 'extra-legal' or 'irrelevant', but directly relevant to the legal issues at stake in each case.
23 On 'inherited' enmity in classical Athens, see Alwine (2015: 49). Cf. Griffith-Williams (2012: 157).

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Chapter 5

Deceptive narratives in the speeches of Isaeus

Mike Edwards

In this chapter, I offer a contribution to the debate concerning the ways in which speakers in the ancient Athenian lawcourts attempted to establish a relationship with their audience. My focus will be on one method by which speakers tried to engage the emotions of their listeners and thereby create the desired disposition of the audience towards themselves and especially their opponents. This method, which involves the creation of ἦθος (*ēthos*), is what Christos Kremmydas refers to in an excellent recent paper as 'the discourse of deception'.[1]

In a volume dedicated to narrative, I should make it clear at the outset that I am interpreting the word 'narrative' as referring not simply to those sections of the speech which may be classed according to Greek rhetorical theory as the διήγησις (*diēgēsis*) of the speech.[2] Some of my examples do indeed fall in narrative sections of the speeches,[3] but the majority do not. My justification with Isaeus is that in most of his speeches he employs the tactic of mixing narratives and proofs, and he does not follow the straightforward sequence of proem, narrative, proofs and epilogue as advocated in Greek rhetorical theory. It would then be an interesting exercise to map Kremmydas' examples of the 'discourse of deception' onto the various parts of the speeches, but that is not my purpose here. I should also note, since we are concerned with the creation of *ēthos* in the telling of the story, that while the narrative is the most natural part of a speech in which to depict character (most notably of Euphiletus in Lysias 1),[4] characterization of speakers and their opponents occurs throughout speeches. It is, indeed, very clear from Kremmydas' paper, and I hope from what I am about to say, that the creation of *ēthos* is not confined to narratives as strictly defined.

For Kremmydas, 'the discourse of deception was not employed indiscriminately but was a powerful rhetorical strategy of portraying the *ēthos* of the opponent, the speaker, and (more rarely) the audience, and operated within context-specific boundaries'.[5] He identifies through detailed lexical analysis a typology of 'anti-deception topoi', which he categorizes under three broad headings, viz. (i) topoi characterizing an opponent(s); (ii) topoi characterizing the speaker; and (iii) topoi describing the *demos*' previous experiences of deception. These are then grouped under nine sub-categories.[6] My aim here is to examine passages of Isaeus that Kremmydas notices in connection with *ēthos* and his various

categories of 'anti-deception topoi', which also, since Isaeus' speeches concern cases of disputed inheritance under a variety of legal headings, provide examples of Kremmydas' 'context-specific boundaries'. Kremmydas in fact finds examples in Isaeus only of sub-categories i a ('He/they will attempt to deceive you') and i c ('Do not be deceived by him'), though my analysis will suggest ways in which his discussion may be supplemented by other passages and other vocabulary. But first, some general background remarks.

The deceptive power of rhetoric is, of course, by no means a new idea. Josiah Ober wrote in his highly influential book *Mass and Elite in Democratic Athens* that

> Popular mistrust of rhetorical ability and the skilled speakers who misused it is demonstrated by the eagerness of private trial litigants to portray their opponents as slick speakers who were using their rhetorical ability to evil ends. One of Isaeus' clients (10.1) said that he was unequal to his opponents, who were powerful speakers (*legein deinoi*) and well prepared (*paraskeuasasthai hikanoi*); the plaintiff himself claimed to have had no practice in speaking in court, while his opponents were experienced litigants. Another of Isaeus' clients (9.35) cried, "Help me, jurors. If [my opponent] Cleon is a better speaker than I (*legein emou dunatai … mallon*), do not allow this fact to be stronger than law and justice".[7]

Ober, no doubt unwittingly rather than with deceptive intent, in fact misrepresents the position of the speaker of Isaeus 10 as a plaintiff, since this case was a διαδικασία (*diadikasia*) in which there were rival claimants to an estate, not a plaintiff and defendant.[8] But I start with him, rather than Jon Hesk, whose *Deception and Democracy in Classical Athens* was in part inspired by Ober, because Ober is one of those relatively rare scholars who foregrounds Isaeus in a discussion that is not confined to Athenian inheritance law – while Hesk's index only lists one brief reference to Isaeus, in his discussion not of deception but of how words developed technical meanings.[9] Of course, it comes as no surprise that Ober singles out Isaeus here, given the regular link made between Isaeus and deceitful rhetoric that goes back at least to Dionysius of Halicarnassus, who wrote in his essay on Isaeus

> καὶ πρὸς μὲν τὸν ἀντίδικον διαπονηρεύεται, τοὺς δὲ δικαστὰς καταστρατηγεῖ, τοῖς δὲ πράγμασιν, ὑπὲρ ὧν ὁ λόγος, ἐκ παντὸς πειρᾶται βοηθεῖν.
>
> (DH, *Isaeus* 3)

> He blackens his opponent's character, outgenerals the jury with his stratagems and tries by every means to help his client's case.[10]

That reputation for chicanery was then cemented by his main modern commentator William Wyse who, as I have written elsewhere, 'easily outgenerals Dionysius,

for example on p. 393, "the impudence of these paragraphs is a measure of Isaeus' contempt for the intelligence of an Athenian tribunal"'.[11] But, as I indicated above, my plan is to follow the lead of neither Ober nor Hesk, but of Kremmydas, whose different approach to the topic started me thinking about this aspect of Isaeus' speeches, though he too was not primarily concerned with Isaeus.

Kremmydas bases his paper on various nouns and verbs of deception, which include (I will just give the verbal form) ἀπατάω and ἐξαπατάω, φενακίζω, παρακρούομαι, παράγω/παράγομαι, and πλανάω and ἀποπλανάω.[12] Of these, φενακίζω and πλανάω/ἀποπλανάω do not appear in Isaeus; I shall come back to παράγω presently. The most common verb of deception in Isaeus is ἐξαπατάω, of which there are 16 examples; and to them we may add one of ἀπατάω. Of these 17 instances, seven come in speech 5, four in speech 4, and two each in speeches 8 and 11, with one each in speeches 6 and 9. None of these words are found in speeches 1, 2, 3, 7 or 10. I do not intend to go through every occurrence, but it is immediately interesting that the largest number is in speech 5, *On the Estate of Dicaeogenes*, which concerned inheritance but was technically a δίκη ἐγγύης (*dikē engyēs*, 'private suit over a surety'), a prosecution of a man, Leochares, who had acted as surety for Dicaeogenes, the rival claimant to the speaker Menexenus. This reminds us of Kremmydas' point that the specifics of forensic cases may explain a relatively high frequency of the discourse of deception. Menexenus paints a picture of Dicaeogenes and his cronies as being totally unreliable, indeed mendacious, and so one of them acting as surety was, in the modern expression, not worth the paper it was written on; and another of Menexenus' relatives, his cousin who was also named Menexenus, had betrayed him. Though this is a private case, and Kremmydas notes that deception is a far more frequent topic in public cases, it is nevertheless a prosecution speech, where on his figures there are 71 attestations of deception topoi in prosecution speeches as opposed to eight in defence speeches. Five of the seven instances in this speech contribute to the picture of unreliability that is the *ēthos* of the opponents and the previous behaviour of the cousin, as opposed to the reasonable behaviour of the speaker and his supporters:

> i) ἐπειδὴ δὲ Δικαιογένης, ὦ ἄνδρες, οὐκέτι ὑμᾶς δύναται ἐξαπατᾶν, πείθει Μενέξενον … ἡμᾶς … προδοῦναι.
>
> (Isae. 5.13)

> Since Dicaeogenes, gentlemen, could no longer *deceive* you, he persuaded Menexenus … to betray us.[13]

> ii) ὁ μὲν τοίνυν Μενέξενος παθὼν ἄξια τῶν ἑαυτοῦ τρόπων ἠπατήθη ὑπὸ τοῦ Δικαιογένους.
>
> (Isae. 5.14)

> Menexenus got what he deserved for his behaviour and *was deceived* by Dicaeogenes.

iii) καὶ ἐγγενόμενον ἡμῖν αὐτὸν ἐπειδὴ εἵλομεν τῶν ψευδομαρτυρίων ἀτιμῶσαι, οὐκ ἐβουλήθημεν, ἀλλ' ἐξήρκεσε τὰ ἡμέτερα ἡμῖν κομισαμένοις ἀπηλλάχθαι. τοιοῦτοι δὲ γενόμενοι περὶ Λεωχάρην καὶ Δικαιογένην ἐξηπατήθημεν ὑπ' αὐτῶν, ὦ ἄνδρες.

(Isae. 5.19)

Although we could have punished him with disfranchisement since we had won a verdict of false witness, we did not want this, but were content to recover what belonged to us and be rid of him. But after acting in this way towards Leochares and Dicaeogenes, we *were deceived* by them, gentlemen.

iv) καὶ τοῦτο ἐπέδωκεν, οὐκ εἰσήνεγκεν, ἀλλ' ἐπ' αἰσχίστῳ ἐπιγράμματι ἐξετέθη αὐτοῦ τοὔνομα ἔμπροσθεν τῶν ἐπωνύμων … καίτοι πῶς ἄξιον θαυμάζειν, ὦ ἄνδρες, εἰ ἐμὲ ἐξηπάτησεν ἕνα ὄντα, ὃς ὑμᾶς ἅπαντας ἅμα συνειλεγμένους ἐν τῇ ἐκκλησίᾳ τοιαῦτα ἐποίησε;

(Isae. 5.38)

He pledged this sum but didn't pay it, and his name was posted up on a most shameful list in front of the statues of the Eponymous Heroes …. So how can you be surprised, gentlemen, that he *deceived* me, a single person, when he acted in this way towards all you gathered together in the Assembly?

To cap it all, Dicaeogenes even deceived his own friends:

v) τῶν δ' ἐπιτηδείων Μέλανα μὲν τὸν Αἰγύπτιον, ᾧ ἐκ μειρακίου φίλος ἦν, ὅπερ ἔλαβε παρ' αὐτοῦ ἀργύριον ἀποστερήσας … τῶν δὲ ἄλλων αὐτοῦ φίλων οἱ μὲν οὐκ ἀπέλαβον ἃ ἐδάνεισαν, οἱ δ' ἐξηπατήθησαν, καὶ οὐκ ἔλαβον ἃ ὑπέσχετο αὐτοῖς ... δώσειν.

(Isae. 5.40)

Of his close friends he deprived Melas the Egyptian, who had been his friend from boyhood, of money … and of his other friends, some have not recovered money they lent him, others were *deceived* and never received what he'd promised to give them.

But the other two instances in speech 5 both concern the judges:

vi) βούλομαι ὑμᾶς καὶ παρ' ἐμοῦ τὰ πραχθέντα πυθέσθαι, ἵνα εἰδότες τἀληθῆ, ὅ τι ἂν δοκῇ ὑμῖν, ψηφίσησθε, ἀλλὰ μὴ ἐξηπατημένοι.

(Isae. 5.5)

I want you to learn the facts from me as well, so that you may vote as seems best to you in full knowledge of the truth, without being *deceived*.

vii) ἡμεῖς μὲν οὖν μαίνεσθαι αὐτὸν ἡγούμεθα τῇ λήξει, οὐκ ἄν ποτε οἰόμενοι τὸν αὐτὸν ἄνδρα τοτὲ μὲν φάσκοντα ἐπὶ τῷ τρίτῳ μέρει ποιηθῆναι τοτὲ δ' ἐφ' ἅπαντι τῷ κλήρῳ δόξαι τἀληθὲς λέγειν ὑμῖν· εἰς δὲ τὸ δικαστήριον εἰσελθόντες … ἠδικήθημεν, οὐχ ὑπὸ τῶν δικαστῶν ἀλλ' ὑπὸ Μέλανος τοῦ Αἰγυπτίου καὶ τῶν ἐκείνου φίλων … ὑπὸ δὲ τῶν τὰ τοιαῦτα ποιούντων ἐξηπατήθησαν οἱ δικασταί.

(Isae. 5.8)

We thought he was mad in making this claim, never imagining the same man could at one time state that he'd been adopted as heir to one-third of the estate and at another time that he'd been adopted as sole heir, and that you would believe he was telling the truth. But on coming to court … we were wronged, not by the jurors but by Melas the Egyptian and his friends … and by their acting in this way the jurors were *deceived*.

These two passages seem to me to fit Kremmydas' categories ii b ('I will not allow you to be deceived') and iii a ('you have been deceived by orators'). I note in passing that in the first one the speaker varies the usual topic so that the judges can vote 'as seems best' rather than 'according to the laws'.

We move on now to speech 4, *On the Estate of Nicostratus*, which was delivered in a διαδικασία (*diadikasia*). Kremmydas notes that with this class of case 'the discourse of deception is very sparsely used',[14] and less frequently than in the other main type of case we have connected with inheritance disputes, the δίκη ψευδομαρτυρίων (*dikē pseudomartyriōn*, 'suit for bearing false witness'), though in the latter there is a higher frequency in Demosthenes and Apollodorus than in Isaeus. Indeed, as he also notes, two of the three δίκαι ψευδομαρτυρίων in Isaeus have no examples, the only instance coming in speech 6, *On the Estate of Philoctemon*, where we have one occurrence of ἐξαπατάω:

δέομαι οὖν ὑμῶν, ὦ ἄνδρες, ἵνα μὴ ἐξαπατηθῆτε, τῇ διαμαρτυρίᾳ τὸν νοῦν προσέχειν περὶ ἧς τὴν ψῆφον οἴσετε.

(Isae. 6.62)

I therefore beg you, gentlemen, to pay close attention to the declaration you are going to vote on, so that you won't be *misled*.

This fits Kremmydas' category i c ('Do not be deceived by him'); and it is in this context that I would bring in another verb connected with deception, κατασκευάζω, which occurs five times in the extant speeches (4.6, 6.35, 8.43, 9.2, 11.37). For example:

περὶ δὲ τῶν ὑπολοίπων εὐθὺς ἐπεβούλευον, καὶ πάντων δεινότατον πρᾶγμα κατεσκεύασαν.

(Isae. 6.35)

> And then they immediately began plotting about the rest, and they *came up with* the most dreadful scheme of all.

Note also here the verb *epebouleuon* ('plotting'). But back to speech 4, which is one of six διαδικασίαι (*diadikasiai*) in the extant corpus of Isaean (speeches 1, 4, 7, 8, 9, 10). I note that three of these (speeches 1, 7 and 10) are among the five speeches which do not contain any of Kremmydas' vocabulary of deception, so supporting his contention that it is sparse in such suits. However, speech 4 has four instances of ἐξαπατάω and one of the two instances in Isaeus of παρακρούομαι (the other is found in fr. 2 F). Two of the four uses of ἐξαπατάω are listed by Kremmydas as examples of his category i a ('they will attempt to deceive you'). At the start of the speech we have:

> τὰ δὲ ἐνθάδε συμβεβηκότα δοκεῖ μοι ὑμῖν ἱκανὰ γενέσθαι ἂν τεκμήρια, ὅτι ἅπαντες οἱ κατὰ τὴν δόσιν τῶν Νικοστράτου ἀμφισβητοῦντες ἐξαπατῆσαι ὑμᾶς βούλονται.
>
> (Isae. 4.1)

> What has happened here I think should be sufficient proof for you that all the people who are claiming Nicostratus' property as a bequest want to *deceive* you.

Later on, in a kind of ring-composition, there is:

> σαφῶς μὲν οὖν ἴστε, ὦ ἄνδρες, ὅτι οὗτοι οὐ δικαίως τῶν Νικοστράτου ἐφίενται, ἀλλὰ βούλονται μὲν ὑμᾶς ἐξαπατῆσαι.
>
> (Isae. 4.21)

> So you can clearly see, gentlemen, that there is no legal support to these people's assault on Nicostratus' property, but they want to *deceive* you.

But I am rather more interested in the third instance, where ἐξαπατῆσαι is combined with παρακρούσασθαι:

> ὁπότε δὲ καὶ τοὺς ὁμολογουμένως παραγενομένους οἷόν τ' ἐστὶν ἐξαπατῆσαι, πῶς οὐκ ἂν ὑμᾶς γε τοὺς μηδὲν τοῦ πράγματος εἰδότας πολὺ μᾶλλον ἑτοιμότερόν τις παρακρούσασθαι ἐγχειρήσειεν;
>
> (Isae. 4.14)

> But since it's possible to *deceive* even those who were admittedly present, how much more readily might somebody attempt to *mislead* you who know nothing of the matter?

This does not fit easily into any of Kremmydas' categories (perhaps i a, 'he will attempt to deceive you'), but is clearly a warning to the judges to be on their guard against being deceived. Lastly, a few sections later the speaker does explicitly warn the judges to be on their guard, though not against orators, as in Kremmydas' category iii a, but against witnesses:

> ταῖς μὲν διαθήκαις διὰ μαρτύρων ὑμᾶς δεῖ πιστεῦσαι, ὑφ' ὧν ἔνι καὶ ἐξαπατηθῆναι.
>
> (Isae. 4.17)

> You must secure trust in a will through witnesses, but it's possible also to be *deceived* by them.

This refers to the rival claimant Chariades' witnesses to his adoption by the deceased Nicostratus as his son and heir, and so is one of the key points in the case against him made by Isaeus' client on behalf of Hagnon and Hagnotheus. Another of Chariades' allegations was that Nicostratus was the son not of Thrasymachus, the brother of Thrasippus who was the father of Hagnon and Hagnotheus, but of Smicrus. The speaker's tactic is to attack this allegation as being simply a falsehood, and as an important part of the picture of deception I once again note the verb κατασκευάζω, as well this time as the noun παρασκευή (*paraskeuē*, 'plot'):

> ἔστι μὲν οὖν ἅπαντα ταῦτα ἐπήρεια καὶ παρασκευή … ἄλλον δὲ πατέρα τῷ τεθνεῶτι κατασκευάζοντες οὐ μόνον περὶ τῶν διαθηκῶν ἀλλὰ καὶ περὶ τοῦ γένους λόγον ἐμβεβλήκασιν.
>
> (Isae. 4.5–6)

> All this is an insult and a plot … by *inventing* another father for the deceased, they have introduced an argument not only about the will but also about his parentage.

Thus, the specifics of the case are once more an important factor in the discourse of deception. One final point may be made on the speech *On the Estate of Nicostratus*. While the occurrences of the vocabulary of deception are, by Isaeus' standards at least, significant in this speech, what makes them stand out even more is the fact that it is a supporting speech of only 31 sections. Coupled with the fact that Chariades was himself only a friend, not a relative, of the deceased Nicostratus (he claimed that Nicostratus left him the estate in his will), the further fact that the speech was delivered by an experienced friend of the claimants, not a relative, perhaps allowed him slightly more freedom to employ allegations of deception.

I shall end with speech 11, the well-known Hagnias case. This was a public suit, an εἰσαγγελία κακώσεως ὀρφανοῦ (*eisangelia kakōseōs orphanou*, 'impeachment for maltreatment of an orphan'), though as Hesk notes in his sole reference to

Isaeus, the speaker several times refers to the case as a γραφή (*graphē*, the generic term for a 'public suit'). But this was very much a family affair, delivered by Theopompus in his defence against the charge of maltreating his brother's son as his guardian by one of the boy's other guardians. Therefore, the speech fits Kremmydas' general pattern that the discourse of deception is more frequent in public suits than in private ones, and that it is three times higher in prosecution than in defence speeches. Nevertheless, the picture is not, perhaps, quite as simple as would appear from Kremmydas' table in his Appendix 2. The two instances he lists there are of ἐξαπατάω:

> a) εἰ δέ τοι μηδὲν τούτων ἔξει εἰπεῖν, πῶς οὐκ ἐλεγχθήσεται φανερῶς ἐμὲ μὲν συκοφαντῶν, ὑμᾶς δ' ἐξαπατῆσαι παρὰ τοὺς νόμους ζητῶν.
>
> (Isae. 11.4)

> But if he cannot state any of these [degrees of kinship to Hagnias], surely he will be clearly proved to be acting as a sykophant against me and trying to *deceive* you in contravention of the laws?

> b) τότ' ἤδη πλάττει ταῦτα καὶ μηχανᾶται, προσδοκῶν τούτοις τοῖς λόγοις ῥᾳδίως ὑμᾶς ἐξαπατῆσαι.
>
> (Isae. 11.22)

> It was only then that my opponent *invented* and *fabricated* these fictions, expecting he would easily *deceive* you by these stories.

The first of these is a strong attack on the *ēthos* of the opponent – note the conjunction of ἐξαπατῆσαι with συκοφαντῶν (*sykophantōn*, 'acting as a sykophant'), equating the opponent with the despised class of professional informers who, by implication, were trying to deceive the jurors, as well as παρὰ τοὺς νόμους (*para tous nomous*), 'in contravention of the laws' by which the jurors have sworn to make their decision. The second is included by Kremmydas among his examples in category i a ('he will attempt to deceive you'), and note the use this time of ἐξαπατῆσαι in conjunction with πλάττει (*plattei*, 'invented') and especially μηχανᾶται (*mēchanatai*, 'fabricated'). μηχανάομαι (*mēchanaomai*) is another verb that is frequently used in the context of deception and occurs four times in the Isaean corpus, and twice in this speech. The other example comes in an equally strong attack on the opponent, again addressed to the judges:

> ὅτι μὲν οὖν οὔτε περὶ τούτων οὐδὲν δίκαιον πεποίηκεν οὔτε περὶ τῶν ἄλλων ἀληθὲς οὐδὲν εἴρηκεν, ἅπαντα δὲ δεινῶς πλεονεξίᾳ μεμηχάνηται διαβάλλων καὶ τοὺς νόμους παράγων καὶ ὑμῶν καὶ ἐμοῦ παρὰ τὸ δίκαιον περιγενέσθαι ζητῶν, οἶμαι μὰ τοὺς θεοὺς οὐδ' ὑμᾶς ἀγνοεῖν ἀλλ' ὁμοίως εἰδέναι πάντας.
>
> (11.36)

> I think, by heavens, that you are well aware and all equally understand that he has acted completely unjustly in this matter and has never spoken a word of truth about anything else, but has cleverly *plotted* everything out of greed, slandering us, *twisting* the laws, and seeking unjustly to get the better of you and me.

Note on this occasion the phrase 'twisting the laws' – the Greek verb is παράγω (*paragō*), one of Kremmydas' words of deception, though here used in a slightly different sense.[15] As well as μηχανάομαι and παράγω I note instances in this speech of παρασευάζω (ἐμοὶ τοιούτους ἀγῶνας παρασκευάζειν, '*concocting* this kind of suit against me', 11.14) and κατασευάζω (περὶ δ' ἐμὲ πλοῦτόν τινα τῷ λόγῳ κατασκευάσαντα, 'but for me he *creates* with his speech a picture of wealth', 11.37). Thus, the man whom John Davies in *Athenian Propertied Families* suspected of being 'a thorough-paced scoundrel',[16] has a good go at portraying his opponent in exactly the same way, and in this instance we know that he was successful.

Or was it rather Theopompus' speech-writer, Isaeus, who was the scoundrel, and a master of deception? I think we know how Dionysius of Halicarnassus and William Wyse would have answered that question, but I also think that Isaeus was only doing his job as a first-rate logographer – even if he thereby confirmed Plato's worst fears about the deceptive power of rhetoric. Christos Kremmydas has also done a first-rate job by raising the issue of 'The Discourse of Deception and Characterization', and I hope this discussion may have added a little to his picture of an important narrative tactic in Attic oratory.

Notes

1 See Kremmydas (2013).
2 As at Arist. *Rhet*. 3.13.3, 1414a–1414b.
3 Such as Isae. 5.8, 13–14, 6.35. The division of speeches is no straightforward or scientific matter, of course. As Michael de Brauw (2007: 200 n. 12) noted, '(a)uthorities can differ as to what counts as a canonically divided speech … Thus, anyone's count is open to argument. That said, I find 24 canonically divided speeches in the surviving canon of the Attic orators'. I would not agree with de Brauw's total, such as his five for Isaeus (speeches 1, 2, 7, 8, 10), of which for me only 1 and 10 might arguably fit the bill.
4 See Webb in this volume.
5 Kremmydas (2013: 52).
6 They are not all relevant here, but are: Cat. i a, 'He/they will attempt to deceive you'; Cat. i b, 'You will not realize that you have been deceived'; Cat. i c, 'Do not be deceived by him'; Cat. i d, 'You are deceiving them'; Cat. ii a, 'I shall not appear to deceive you'; Cat. ii b, 'I will not allow you to be deceived'; Cat. ii c, 'He/they will say I deceive you'; Cat. iii a, 'You have been deceived by orators'; and Cat. iii b, When the *demos* reversed the effects of deception.
7 Ober (1989: 173).
8 Though see Griffith-Williams (2013: 6–7) and this volume (p. 68 n. 2).
9 Hesk (2000: 57 with n. 116).

10 Trans. Usher (1974).
11 Edwards (2008: 42).
12 All bear the general sense of 'deceive': *apataō* ('cheat', 'trick'), *exapataō* ('cheat thoroughly' or 'deceive thoroughly'), *phenakizō* ('cheat', 'trick'), *parakrouomai* ('mislead'), *paragō*/*paragomai* ('mislead'), *planaō*/*apoplanaō* ('mislead'/'lead astray').
13 Translations of Isaeus are after Edwards (2007).
14 Kremmydas (2013: 84).
15 It also occurs in 8.37, used of the opponent Diocles: παράγων ἄνδρα πρεσβύτερον θεραπείαις καὶ κολακείαις ('*seducing* the old man by his attentions and blandishments').
16 Davies (1971: 84).

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Chapter 6

The story about the jury[1]

Peter A. O'Connell

Storytelling in the Athenian courts takes two basic forms. First, speakers can tell stories about the past that support their claims. These stories are consistent with Aristotle's contention (*Rhet.* 1.3.2, 1358b2–6, 1.3.4, 1358b13–20) that forensic speeches address the past: what happened, rather than what should be done. Second, speakers can tell stories about the present, the trial itself. This 'trial story', to borrow Chris Heffer's expression,[2] takes place in the courtroom. Its characters are the litigants, their *sunēgoroi*, their witnesses and the jurors.[3] It is a story in progress, and a speaker tries to tell it in such a way that it seems to be leading inescapably to a conclusion favourable to himself.

In an analysis of narrative technique in the closing arguments of a 1991 New York City homicide trial, Anthony Amsterdam and Randy Hertz associate the trial story with the defence. While the prosecutor tells a story about the defendant intentionally killing the victim, the defence attorney tells a story about responsible, civic-minded jurors who encounter a dilemma: how to weigh the evidence provided to them and what verdict to render. This dilemma is fraught with danger. The jurors might be led astray by clever arguments, circumstantial evidence, or emotions, but they must be true to their promise to convict only if guilt lies beyond reasonable doubt. In the defence attorney's story, the jurors are like heroes on a quest, and they will succeed only by resisting the temptations of the prosecution and acquitting the defendant.[4] Modern stories about the jury often follow mythical, almost archetypal patterns, where jurors are compared to heroes on a quest or detectives solving a mystery.[5] A common variant of the jury's quest portrays the jurors as heroes fighting for justice against threats posed by racism or inequality.[6] Athenian litigants were no strangers to presenting their cases in mythical terms. Most famously, in Antiphon's *Against the Stepmother*, the speaker calls his stepmother Clytemnestra (1.17), implicitly calling on the jurors to join him in the role of Orestes.[7] They were also capable of presenting the jurors' choice in terms of its larger social implications. While Athenian litigants do not ask jurors to weigh the effects of racism or poverty, as modern lawyers might, they do encourage them to consider individual guilt or innocence within a constellation of broader issues such as the guilt of the Thirty and their supporters or the collective interests of the democracy.[8] A particularly common story about the jury in the Athenian courts

finds the jurors facing the dilemma of hurting the democracy by punishing one of its generous supporters or helping the democracy by acquitting him, ensuring that his generosity will continue, and setting an example to other potential benefactors.[9] Following the lead of modern scholarship on trial stories, this essay focuses on five ways that Athenian litigants and speechwriters tell a story about the jury. By encouraging the jurors to think of themselves as the protagonists of a story in progress, speakers lead them to consider their cases through the frame of the story, which is moving towards a conclusion favourable to the speakers.

Jurors on trial

Litigants can present a trial as though the jurors themselves are being judged by Athenians or other Greeks, the jurors' family members, divinities, or the dead.[10] In this version of the story about the jury, the central issue of the trial is no longer the guilt of the defendant but the consequences of the jurors' verdict. 'Since while you judge you are also being watched,' says Aeschines in *Against Ctesiphon*, 'cast your vote so that it's consistent with a defence before those citizens who aren't here now but will ask you what you decided' (3.247). By suggesting that jurors should be looking ahead to a future defence, Aeschines may be taking advantage of their familiarity with the norms of Athenian litigation, where disputes could stretch across multiple trials. The defence he envisions, however, is in the court of public opinion rather than a court of law.[11] The jurors' decision has become part of a larger narrative about how observers will judge them as individuals and as citizens of the polis. As Dimos Spatharas has recently shown, predictions of the jurors being judged seek primarily to activate the jurors' sense of shame. They feel anticipatory embarrassment as they imagine having to justify to friends, family, or other close acquaintances decisions that seem to contradict their own values.[12]

References to the Athenians or other Greeks judging the jurors are common in cases involving public figures. In *Against Aristogeiton*, for instance, Dinarchus declares, 'And so the saying we have heard many times is true, that while you are preparing to vote on the defendant, the bystanders and everyone else are preparing to vote on you' (2.19).[13] By framing the trial as though it forms a public referendum on the jurors, Dinarchus encourages the jurors to think of how their decision will affect themselves. If they condemn Aristogeiton to death, they will be σώφρονες δικασταί ('prudent jurors'), voting in the interest of themselves and of all the Athenians (2.20). If they acquit him, they will be violating their judicial oath (2.20). Dinarchus implicitly asks the jurors to make a choice about how they want their story to end. Both outcomes depend on the judgement of the spectators, who will either endorse the jurors' status as 'prudent' or condemn them as traitors. The presence of spectators in the court may have heightened the jurors' sense that they were on trial themselves, and Dinarchus may even be encouraging the spectators who agreed with his case to shout their support and put pressure on the jurors.[14]

Adriaan Lanni has argued that references to the jurors' being judged by their fellow citizens attest the central role of public accountability in the Athenian legal system. In other words, the jurors' power was always tempered by the potential for public criticism, and so their decisions would have been influenced by a concern for popular opinion.[15] Lysias' *Against Teisis* even dramatizes the quasi-judicial role of popular opinion by describing how the bystanders who saw the injured Archippus being carried from Teisis' home on a cot passed a kind of verdict on the city for failing to 'immediately and publicly punish people who commit crimes of that sort' (fr. 279.6 Carey).[16] Litigants who describe the jurors as though they are on trial try to bring concern for public opinion to the forefront of the jurors' minds. They encourage the jurors to construct a narrative about the trial where the question is not 'is the defendant guilty' but 'will the jurors make the right decision in the eyes of everyone else'. The two questions are not incompatible, but focusing on the jurors makes them think of the trial in terms of its effect on themselves as well as its effect on the litigants.

In *Against Neaera*, Apollodorus describes how the jurors' decision will affect not only their public standing but also their domestic happiness. He imagines any jurors who acquit Neaera being questioned by their own wives, daughters or mothers, who ask, 'What did you do?' (59.111). The direct speech helps bring this imagined future into the present, encouraging the jurors to undergo this cross-examination in their minds and to experience the shame that would accompany the response, 'we acquitted her' (59.111).[17] Apollodorus then predicts how the jurors who sided with Neaera will be judged: 'The women who conduct themselves with the most modesty will be angry with you, since you considered her worthy of sharing with them the institutions of the city and its rituals' (59.111). By introducing the threat of familial discord, Apollodorus changes the terms of the trial. The question is no longer Neaera's guilt but whether the jurors accept the distinction between prostitutes and their own female relatives. Apollodorus also blurs the line between domestic consequences and civic consequences, claiming that an acquittal will set a dangerous precedent by granting 'whores the authority to live with anyone they want and to say that just about anyone is the father of their children' (59.112).[18] Apollodorus frames the story about the jury as a choice between agreeing with him or betraying the laws of Athens. This is the culmination of the strategy that Apollodorus has pursued throughout his narrative by presenting Stephanus' *oikos* as a brothel that threatens every Athenian *oikos* and by taking advantage of fourth-century Athenian anxiety about citizenship, legitimate children and public morality.[19] The idea that the jurors' verdict will undermine the laws of Athens recalls Lysias' *On the Death of Eratosthenes*, where Euphiletus imagines that if the jurors convict him of murdering Eratosthenes, robbers will start justifying their presence in other people's houses by claiming they were adulterers (1.36).[20] Euphiletus does not present the jurors as the object of scrutiny and judgement, but he does encourage them to consider their decision and its consequences as part of a story that extends beyond the trial.

In *Against Leptines*, Demosthenes describes spectators judging the jurors not merely as individuals but also as representatives of the city. He is speaking against Leptines' law, which ended all exemptions for festival liturgies except for the descendants of Harmodius and Aristogeiton. He describes the trial in terms of Athens' reputation. A vote in favour of Leptines' law will make the city 'appear untrustworthy, spiteful, and cheap in everyone's eyes' (20.164). Furthermore, Demosthenes tells the jurors, 'each of you will share individually in the reputation of what you decide collectively' (20.165). If the jurors decide in favour of Leptines' law, they will align themselves and the city with envy rather than generosity, evil rather than justice, the worst things rather than the best. For everyone – both the bystanders and everyone else – knows that these are the central issues of the trial (20.165). Demosthenes then goes on to tell the jurors,

> If you obey the better influences and vote according to our recommendation, you will seem to have made an appropriate decision and you will have voted in the city's best interests. And if there is ever need, you will not be short of men willing to run risks on your behalf.
>
> (20.166)

Here, Demosthenes conflates the jurors and Athens. With 'you will not be short of' (ἀπορήσετε) and 'on your behalf' (ὑπὲρ ὑμῶν), he describes the advantages that will come to Athens if the city continues to honour its benefactors as advantages that will come to the jurors.[21] In trying to convince the jurors to reject Leptines' law, Demosthenes tells a story where the jurors engage in a far more important act of persuasion, namely trying to convince any potential benefactors who are watching the trial or will hear about it later to think well of them and to continue helping Athens in times of crisis. Demosthenes' story seems to lead to an inevitable conclusion where the jurors follow his advice, resist the traps set by other orators' 'shouting, aggression, and shamelessness' (20.166), gain a good reputation for themselves and the city, and share in the continuing generosity of Athens' benefactors.

When speakers create a story where the jury is on trial, the jurors' public and private reputations, the validity of the polis' laws and the promise of civic prosperity all become reasons for the jurors to vote in their favour. In some speeches, the jurors are said to expect reward or punishment not only from living mortals but also from divinities and from the dead. Lycurgus in *Against Leocrates* tells his jurors that they are liable for the crimes they fail to punish as justice demands because, 'even though each of you votes in secret, you will be making your decision evident to the gods' (1.146). Along the same lines, in *On the False Embassy*, Demosthenes says that secret ballots are not secret for the gods, who will reward the jurors who decide justly, along with their children (19.239–40). In this version of the story about the jury, the guilt of the defendant is of secondary importance. The jurors are being put to the test, and what really matters is whether the omniscient gods approve their verdict. The setting of the story has moved from

the courtroom and the city to the cosmos, its cast of characters has expanded to include children at home and perhaps not even born, its time span now extends into the indefinite future and its consequences now include divine favour or divine wrath. Although similar references to divinities watching over jurors are rare, they are not unattested.[22] Fear of the gods' anger may have played a significant role in many Athenian trials.

Jurors needed to consider how the dead as well as the gods would have judged their verdicts. Curse tablets demonstrate that litigants outside of trials often invoked chthonic powers to bind their opponents, their opponents' witnesses and sometimes even the jurors if a case went against them.[23] Speakers never mention curse tablets, but this does not mean that they had no effect on the jurors' decision-making. For jurors concerned about the outcome of the curses, the story about the jury may have had as much to do with these curse tablets as with the trial. The narrative they constructed for themselves would have been about jurors' protecting themselves and their families from infernal powers, including the dead, and not about doing their patriotic duty or seeking justice. There is a hint of the dead's power in Antiphon's first tetralogy, where the speaker says that the dead man will 'be a weight on the minds' (ἐνθύμιος) of the jurors if they fail to convict the murderer (2.3.10). In addition, Andocides' reference to his dead ancestors pleading on his behalf at the end of *On the Mysteries* (1.148) may have been a subtle way to remind his jurors of the power wielded by the vengeful dead.[24]

In telling a story where the jurors are being judged, a speaker tries to entice them to view the trial not as an independent event but as an episode in a longer story that will continue in the agora, at home, in the underworld and into the next generation. Even if jurors susceptible to this tactic did not all consciously disregard questions of law, evidence and procedure, they may still have been unable to separate their own concerns about the future from the central issues of the trial. Such jurors would have been nudged, perhaps slightly but still significantly, towards accepting the speaker's case.

Creating the jury's character

Speeches, according to Aristotle, can persuade 'if they are delivered in such a way that they create a speaker who is trustworthy' (*Rhet.* 1.2.4, 1356a4–13). He classifies this as persuasion through *ēthos*, 'character'. Dionysius of Halicarnassus considers Lysias particularly adept at *ēthopoiia*, 'creation of character', and it is fundamental to the effectiveness of his speeches (*Lys.* 8). *Ēthopoiia* is not limited to speakers, however. Within the context of the story about the jury, the Attic orators also create characters for the jurors. By 'create characters', I mean that litigants treat the jurors as though they are members of groups favourable to their cases, and so encourage the jurors to think of themselves in this way. In the *dokimasia* speeches of the early fourth century, for instance, most speakers are careful to associate the members of the *boulē* acting as jurors with the democratic faction of the 404/3 counter-revolution, which they call τὸ πλῆθος τὸ ὑμέτερον,

'your crowd'. Such references create a corporate, idealized democratic character for the jurors and elide any differences of opinion that individual jurors may have had about the Thirty.[25] Even the speaker of Lysias' *Against Philon*, who acknowledges that the Athenians were not all on the same side in 404/3, speaks of the democrats as 'your crowd' (31.15). Another way that speakers create a character for the jurors is by introducing claims favourable to themselves with expressions like 'you all know'. Aristotle writes, 'Hearers are also affected by language that speechwriters employ to excess, like, "Who doesn't know?" or "Everyone knows". The hearer agrees out of shame, so that he and everyone else share in the same thing' (*Rhet.* 3.7.7, 1408a32–36).[26] In a study of similar phrases in modern trials ('You know that [the witness is] telling you the truth'; 'You know that they didn't do it'), Laura Felton Rosulek concludes that they are designed to silence 'any doubts the jurors may have had with these assertions' by presenting the jurors' acceptance as a 'given'.[27] Speakers entice the jurors to take on a character whose opinions and values may actually differ from the jurors' own, although, to be plausible, the sentiments attributed to the jurors must not contradict their fundamental view of the world.[28]

Near the beginning of Lysias' *Against Simon*, the speaker encourages the Areopagites judging his case to adopt his own perspective through this language of common knowledge. He and Simon have been involved in a long-standing feud over a boy named Theodotus. Referring to his passion for Theodotus, the speaker says, 'I ask you to think no worse of me, since you know [*eidotas*] that desire happens to all men, and that the one who is able to bear his misfortunes most moderately would be the best and the most self-controlled' (3.4). With 'since you know', the speaker creates a corporate character for the Areopagites, implying that they share his blasé attitude to older men's sexual desire for younger men – it happens to everyone, and it causes misfortunes that need to be borne. He presents a model of how the Areopagites should react to his predicament, and he urges them to conform themselves to this model by stating that it is consistent with what they already know. In the story he tells, therefore, the Areopagites are the kind of people who will recognize his behaviour as embarrassing but not criminal. Anyone who does not share this perspective has to weigh his own opinion against what the speaker says all the other Areopagites believe.

Lysias may also take advantage of the Areopagites' susceptibility to imaginary wish-fulfilment. In the story his speaker tells, he sometimes ascribes to them the perspective of wealthy elites who make fools of themselves in pursuit of pleasure. Fights that arise from drunkenness or rivalry or games[29] or insults or *hetairai* are the kinds of things that 'everyone regrets when they are in their right minds' (3.43). Even if the Areopagites had no first-hand experience of such public quarrels, they can experience the vicarious pleasure of imagining themselves as idle elites who routinely regret the consequences of wild living.[30] The speaker flatters the Areopagites by telling a story where they share his lifestyle and values, including the ability to pursue beautiful boys without the responsibilities of marriage or children.[31] Demosthenes' opponent in the *Against Conon* case seems to have

employed a similar strategy, inviting the jurors to view the activities of Conon and his sons as the excusable hijinks of *kaloi kagathoi* who belonged to clubs like the *Ithyphalloi* and *Autolēkythoi* (54.14). *Against Simon* attributes to the jurors a set of aspirational values. By implying that he has found himself in a situation that anyone could find himself in, the speaker places the jurors within the same in-group as himself. This tactic appears in a wide range of Athenian forensic speeches. For instance, in the speeches involving inheritance or guardianship disputes among very wealthy Athenians, speakers insist on their right to the property without often calling attention to just how unusual the amount of money in question is. In Demosthenes' *First Speech Against Aphobus*, he meticulously tabulates the assets that he alleges were squandered or stolen by his guardians (27.4–11), but he never hints that most of the jurors judging his case could not even imagine what it would be like to own either a shield factory or a bed factory, never mind both of them. He even cites other examples of well-managed estates (27.58–59, 64), placing his own family's wealth within the context of other wealthy families, rather than within the context of the typical Athenian family. The jurors themselves were probably used to calculations involving obols, drachmas and perhaps minas, but Demosthenes creates for them characters that are comfortable dealing with talents. By treating his family's wealth as normal,[32] Demosthenes encourages the jurors to think of it as normal.

In the *Second Speech Against Aphobus*, Demosthenes goes so far as to set up a parallel between the property he says he is being deprived of and the property of the jurors.

> I beseech you, I implore you by your children, by your wives, by your own good things. I wish that you may enjoy them so! Do not overlook me, do not deprive my mother of even her remaining hopes for life and make her suffer what is unworthy of her!
>
> (28.20)

Demosthenes characterizes the jurors as propertied men who defend the interests of other propertied men and so ensure they can all continue to enjoy the same 'good things'. Other wealthy speakers take similar care to create a character for the jurors as the representatives of property and of the laws that secure it. The speaker of Isaeus' *On the Estate of Ciron*, for instance, begins his speech by saying, 'Among other things, gentlemen, we have to take it badly whenever anyone is not only bold enough to claim other people's property but even expects to erase by his words the rights that come from the laws' (8.1). He establishes a character for the jurors as vindicators of property rights and frames the inheritance case as a dispute between ownership and theft. In an influential but controversial article, Stephen Todd concluded that most Athenian jurors would have been peasants. He argued partly on the basis of social values, reasoning that speakers present their arguments in terms of what landowning, self-sufficient or semi-self-sufficient farmers would have accepted as cultural norms.[33] Among such values, he includes

respect for education, female virtue and family pedigree; contempt for slaves and metics and admiration for wealth, especially when it is inherited.[34] Speakers could have appealed to such values even if they were not consistent with the lived experiences of most of their jurors, who, contrary to Todd's conclusion, may have represented a broader cross-section of Athenian society or even have been mostly urban wage-earners.[35] Using the strategy I have been discussing, speakers could have addressed the jurors as though they shared the concerns and lifestyles of landowning farmers not because they actually did, although some of them may have, but because they aspired to do so. Along the same lines, when speakers react in horror at their young female relatives being seen by strangers or hearing coarse language (Lys. 3.6; Dem. 21.79, 40.57), they are encouraging the jurors to imagine themselves as the kind of people whose wives or daughters do not play, shop, work or fetch water outside the house.[36] The speeches compliment the jurors by treating them as though they are the kinds of people they would like to be. Since the wealth distribution in Athenian society seems to have allowed for upward mobility or, at least, for limited participation by poorer citizens in stereotypically elite behaviours,[37] Athenians may have willingly adopted aspirational values as the first step towards acquiring a higher status for themselves or their children.

In *Against Timarchus*, Aeschines creates another kind of aspirational character for his jurors by treating them as his equals in an extended discussion of literary criticism. He anticipates that an unnamed general will insult the jurors, treating them 'as though the jurors are ignorant of cultured education [*paideia*]' (1.141) by adducing Homer's account of Achilles and Patroclus to defend Timarchus' homoerotic relationships. Aeschines pokes fun at the general's pretentions and groups himself with the jurors, insisting with false humility that 'we have already heard a little something ourselves' about poetry (1.141). He then interprets Achilles and Patroclus as an example of an ideal relationship between virtuous men, similar to the relationships of Aeschines himself, rather than between wanton or hubristic ones, such as the relationships of Timarchus. As Andrew Ford has shown, Aeschines' pose as a common man who knows 'a little something' is belied by his subtle exegesis of a Homeric passage that famously has no direct references to a homoerotic relationship between the two heroes. He flatters the jurors, however, by treating them as though they, like he, are qualified to perform and understand high-level literary criticism. In Aeschines' story about the jury, the jurors are sophisticated literary critics, the kind of people predisposed to agree with the distinctions he makes among good and bad homoerotic relationships. As Ford puts it, 'Aeschines is motivating the audience to accept his reading by equating being a sound citizen with being among those "in the know" about poetry'.[38]

Not every speech constructs an aspirational character for the jurors. In *Against Meidias*, for instance, Demosthenes demonizes Meidias as an antisocial elite and distinguishes him from regular Athenians like the arbitrator Straton, the jurors and himself. The story about the jury in *Against Meidias*, therefore, is a story about the jurors defending democratic social order against an elite threat.[39] Meidias and his

legal team presumably tried to tell the story another way, with the jurors having their time wasted by a frivolous suit about a personal feud. Demosthenes excites the jurors' indignation at Meidias through telling details about Meidias' contempt for them and the social abuses he commits with his wealth, such as donating a trireme to avoid cavalry service (21.160–7) and bragging about his wealth as he swaggers through the agora (21.158–9).[40] Demosthenes also encourages the jurors to think of themselves as an embodiment of Athenian laws. 'What is their power? You are.' he says, 'The laws are strong through you, and you through the laws' (21.224). In the story he tells, the jurors' character is a champion of communal democratic values and of law.

Whether speakers in the Athenian courts tell a story about jurors who accept elite values, wealth and intellectualism as normal or about jurors who fight to defend the common man from the excesses of wealth, their goal is to entice the jurors to sympathize with their case. Jurors can enjoy being flattered as they take on the roles that speakers create for them. Behind the flattery lies a meticulous strategy to prevent the jurors from asking uncomfortable questions or doubting the accuracy of information which they are said already to agree with.

The imperative

The connotations of the Greek imperative range from peremptory commands to polite requests. In 1892, C. W. E. Miller argued that Attic forensic orators never use the imperative as a peremptory command but always 'mollify' its harshness in some way, using it as an exhortation, a request, or an entreaty. For example, litigants emphasize the jurors' responsibility to deliberate independently with ἐνθυμεῖσθε ('consider'), or σκοπεῖτε ('look into'), and they emphasize the jurors' power over their fate with βοηθήσατε ('help'), or ἐλεήσατε ('pity').[41] Even when the imperative seems to recognize the independence of the jurors, however, litigants still present themselves as a source of authoritative information. The imperative contributes to a story about the jury where the jurors act based on what litigants have told them.

Invitations 'to consider' with verbs such as ἐνθυμεῖσθε are always closely controlled by the speaker, since he is providing the jurors with the information they are considering. Sometimes, the invitation even attributes a conclusion to the jurors they are unlikely to have reached without the speaker's influence.[42] Isaeus' client in *On the Estate of Cleonymus* says, 'Consider [ἐνθυμεῖσθε] that they are accusing him but not showing you that their cause is just' (1.49), and Lysias' client in *For the Disabled Man* says, 'Consider [ἐνθυμήθητε], all of you, that by saying these things he isn't accusing me any more than everyone else who runs a business' (24.19). Through expressions such as these, speakers tell a story where the jurors depend on them for knowledge of the case they have to decide. The technique is similar to the use of 'everyone knows' statements, since the jurors are asked to reflect on something that is presented to them as already certain.

A passage from Demosthenes' *Against Conon* that does not use the imperative demonstrates the speaker's status as a source of information for the jurors. Ariston, Demosthenes' client, says,

> So first, after I present witnesses of what I've said, I want [βούλομαι] to demonstrate [ἐπιδεῖξαι] how many things he made me suffer, so you'll know [ἵν' εἰδῆτε] that the one who should have condemned the first crimes took the lead himself in committing things more terrible by far.
>
> (54.6)

Sentences similar to this are common in forensic oratory, and they establish the speaker's presentation as a source of authoritative knowledge for the jurors. Of course, the one-to-one correspondence implied by the purpose clause in this sentence is not a reflection of reality. The jurors do not depend only on what a speaker says, but also on what his opponents say and on their own independent knowledge of the laws and norms of Athenian society. The grammatical construction contributes to the story about the jury, however, as much as the reality of the trial does. In this example, the speaker Ariston is the subject of the main verb βούλομαι, 'I want', and the person who does the demonstrating, which affects the jurors and their understanding of the case. The jurors, on the other hand, are the subject of a verb of knowing only in a subordinate clause dependent on the activity of the speaker in the main clause. This pattern recurs throughout forensic oratory: the jurors appear as somehow subordinate to the speaker, either in oblique cases (ὑμᾶς, ὑμῖν or ὑμῶν) in clauses where the speaker is the subject or there is an impersonal subject, or as subjects within subordinate clauses, as in this example. This creates a generalized power relationship where the speaker acts and the jurors are affected by the action.[43]

This hierarchical relationship may have influenced the way the jurors reacted even to sentences with the imperative that seem to emphasize their power and independence, such as the request to vote that appears at the end of many forensic speeches. The end of Lysias' *Against Eratosthenes* is a good example. Lysias says, 'I will bring my prosecuting to an end. You have heard, you have seen, you have suffered, you have him. Judge' (12.100). The last two words in the speech, ἔχετε ('you have him'), and δικάζετε ('judge'), seem to underscore the jurors' power. Eratosthenes is under their control, and only *they* can decide his fate. Lysias also frames the jurors' capacity to give a verdict in terms of what they have experienced themselves, since the jurors are the subjects of ἀκηκόατε ('you have heard'), ἑοράκατε ('you have seen') and πεπόνθατε ('you have suffered'). In the context of the trial, however, the way the jurors interpret each of these verbs depends on the speaker. They heard what Lysias said, and their memories of what they saw and suffered have been coloured by Lysias' descriptions of how the Thirty treated him and his family.[44] Despite the ostensible emphasis on the jurors' independence as voters, therefore, this sentence makes clear that the jurors' decision should be based on Lysias' words.[45] Furthermore, as the last word the jurors

hear from Lysias, 'Judge' is the culmination of his speech. The entire presentation has been leading up to Lysias granting the jurors the permission to cast their vote. As Lysias presents it, the jurors' decision, far from being an independent act of power, is both necessitated by and informed by his speech.

It is difficult to assess the effect of grammatical patterns on the jurors, and I do not want to overstate their importance. Suffice it to say that speakers subtly reinforce their role as an authority by making themselves the subject of verbs of speaking and demonstrating, and that, even when they employ imperatives to encourage the jurors to consider or to vote, this apparent recognition of the jurors' power is always tempered by the speakers' insistence on their own authority. Speakers tell a story where the jurors depend on them for information about the case and make decisions based on what they say.

Jurors as allies

Creating an alliance between the jurors and the speaker is a hallmark of the *captatio benevolentiae* that begins many ancient and modern forensic speeches. In an analysis of American defence attorney Gerry Spence's closing statement in *The Estate of Karen Silkwood v. Kerr-McGee*, Philip Meyer in *Storytelling for Lawyers* argues that Spence 'presents himself as a willing guide' for the jurors on the quest for justice they have undertaken together.[46] Ancient litigants often employ a similar strategy, portraying themselves as the jurors' ally and guide. In the prooemium to *On the Mysteries*, for instance, Andocides says to his jurors:

> I am convinced that you have already prepared yourselves to reach a just verdict, and I have stayed because I trusted you. Voting according to your oaths is the thing that I've seen you paying the most attention to both in private disputes and in public ones. This is the only thing that holds the city together, although the unwilling don't want it to be so.
>
> (1.9)

Andocides compliments the jurors for their dedication to justice and their central role in the democracy. But he also suggests that he and the jurors seek the same goal, since he stayed in Athens only because he knew he could rely on them. In Andocides' telling, he is not simply someone they are judging. By seeking justice in accordance with their oaths, the jurors are acting as Andocides' allies, fulfilling the trust he has placed in them.

In the next sentence, Andocides continues to emphasize the close relationship between himself and the jurors. The jurors may have some false information about what actually happened in the Mysteries and Herms affairs, but he will correct their misunderstanding. 'I will defend myself starting at the beginning' and 'I will teach you', Andocides says (1.10). Andocides is the jurors' guide while they are all engaged together in a search for truth and justice. Other litigants also portray themselves as teachers.[47] Demosthenes in *Against Timocrates* even prefaces his

analysis of Timocrates' law by saying to his jurors, 'In this way I will easily teach you, and you will learn what I say' (24.71).[48] Sometimes, speakers tell stories where they and the jurors share an even closer alliance than teachers and students. In Lysias' *Against the Grain Retailers*, the speaker tells the jurors, 'I present you as witnesses' (22.12). Similarly, Theopompus in Isaeus' *On the Estate of Hagnias* says, 'You all are witnesses on my behalf' (11.48). In this version of the story about the jury, the jurors are not only on a quest for justice with the speaker but are active supporters of the speaker's case.[49]

Speakers can also go beyond the language of teaching or witnessing and compare the jurors to family members. In Antiphon's *Against the Stepmother*, the speaker says,

> You are my relatives. They should have been the dead man's avengers and my helpers, but they have instead become the dead man's murderers and my opponents. To what helpers can anyone turn, or where else will anyone find refuge except with you and with justice?
>
> (1.4)

As Matthew Christ writes, 'The speaker advances a view of the Athenian community as a large family that naturally acts together to assist its individual members'.[50] In the story that Antiphon's client tells, the jurors join this large communal family and help him in his fight for justice. At the end of *On the Mysteries*, Andocides makes an even stronger appeal to his jurors, asking them to imagine his dead relatives pleading on his behalf and then to become his 'father, brothers, and children' and plead for him themselves (1.148–9).

In *Against Timarchus*, Aeschines portrays himself and the jurors as allies engaged in the unsavoury but necessary task of examining Timarchus' life. 'I ask you to excuse me, Athenians', he says, 'if, forced to speak about behaviours that are ugly by nature but performed by this man, I am compelled to say a word that is similar to the deeds of Timarchus' (1.37). Through the language of pardon and necessity, Aeschines implies that he is saying what has to be said with permission of the jurors. A scholion to this section of *Against Timarchus* (79 Dilts) says that Aeschines' 'I ask you' (δέομαι δὲ ὑμῶν) is an example of *prodiorthōsis*, 'correcting in anticipation'. Orators use this rhetorical figure, the scholion says, 'whenever they are going to report something to which the hearers will be unfavourably disposed'.[51] By presenting the jurors as his approving allies in a job that neither they nor he particularly wish to do, Aeschines tries to influence the way they interpret the next part of his speech. The jurors should interpret the words he uses in his allegations about Timarchus' sexual past as necessary frankness rather than inappropriate vulgarity. Under the guise of shared necessity, he also gives them tacit permission to enjoy the titillating details and to imagine things even more scandalous than he describes.[52]

In *On the False Embassy*, Demosthenes uses yet another method to encourage the jurors to think of themselves as his allies. When he accuses Aeschines of

causing the destruction of Phocis, he urges the jurors to look through his eyes, saying

> One can see in what manner the wretched Phocians were destroyed not only from these decrees but also from the deeds that have been done, a fearful spectacle, Athenian gentlemen, and a pitiable one. For when we were travelling to Delphi just now, we had to see all these things, houses razed to the ground, walls stripped away, a country bereft of men in their prime, delicate women, a few small children, and sorry elderly people. No one would be able to approach the evils that are now there with speech.
>
> (19.64–65)

'One can see', Demosthenes says, partly through what he saw himself – what 'we had to see'. If the jurors follow Demosthenes' lead and create a mental picture in their minds that resembles what Demosthenes claims to have seen himself, they will sympathize with the Phocians and become supporters of his case.[53]

Ostensible independence

Speakers can also encourage jurors to participate actively in the trial by helping them draw their own seemingly independent conclusions. In this version of the story about the jury, the jurors do not listen passively but appear to contribute to the argument by making inferences based on information they already know or recognizing the unstated implications of information provided by the speaker. To quote Meyer in *Storytelling for Lawyers* once again, they are led to go 'beyond the information given'.[54] As with all techniques that seem to grant the jury some independence or power, litigants closely control the jurors' conclusions. Enthymemes, physiognomic arguments, descriptions, *eikos* arguments and significant details are all ways of creating the illusion that jurors are making independent judgements.

One of the chief characteristics of the enthymeme, according to Aristotle, is that it omits information that would be obvious to the audience. One can demonstrate that Dorieus won a contest with a crown simply by saying that he won at Olympia, since everyone knows that Olympic victors win crowns (*Rhet.* 1.2.13, 1357a17–21). By leaving out information, enthymemes serve a double purpose: they do not bore the audience with obvious facts and they encourage the audience to take an active part in the argument and to reach conclusions favourable to the speaker seemingly through their own reasoning.[55]

Leaving out information is a tactic not limited to enthymemes. When Aristotle describes the ways a speaker can create an unfavourable character for an opponent or a favourable character for himself, he recommends describing physical actions that will indicate certain traits. As an example of an argument based on such 'physiognomic interpretation',[56] Aristotle cites Aeschines the Socratic saying of Cratylus 'that he was hissing and shaking his hands; these things are convincing, since things they know are signs of things they do not know' (*Rhet.* 3.16.10, 1417b1–3)

The audience will make inferences about the character of Cratylus based on his hissing and hand shaking. Similarly, Aristotle says that an audience will infer that someone is arrogant and rude if you describe him walking away during a conversation (*Rhet.* 3.16.9, 1417a22–24). In both cases, the audience draws conclusions based on their knowledge, conclusions that are ostensibly independent of the speaker but in fact determined by the details he chooses to give. Theophrastus (fr. 696 Fortenbaugh) reflects on the importance of audience participation when he argues that speakers should give incomplete descriptions and cause the audience to fill in the gaps from their own experience. Theophrastus reasons that this flatters the audience by making them feel intelligent. In trials, the strategy extends beyond flattery. Speakers do not directly tell the jurors what they want them to believe but instead create a situation where the jurors seem to reach on their own the conclusion the speakers wish.

Perhaps the best example of persuasion through juror participation are *eikos* arguments, which sometimes function through rhetorical questions. An example is the argument about the letter in Antiphon's *On the Murder of Herodes*. The speaker Euxitheus says,

> They say they discovered in the boat a note I sent to Lykinos saying that I killed the man. But why would I have sent a note when the person who carried the note would have been my accomplice? Since he did it, the matter would have been clearer if he told it himself, and there would have been no reason to hide it from him. If there are things the messenger doesn't know, someone would write down those in particular and send them.
>
> (5.53)

Through the rhetorical question and the two general statements comparing written and oral messages, Euxitheus encourages the jurors to conclude on their own that there was never a note in the first place. This seemingly independent conclusion will make the jurors more likely to agree with Euxitheus when he claims a few minutes later that the prosecutors 'invented the contents of the note' (5.56).

To contribute to the jurors' sense that they are reasoning independently, speakers can also mention telling details that spark associations favourable to themselves in the minds of the jurors. The lamb mentioned in Lysias' *Against Diogeiton* is such a detail. When the speaker describes the expenses that Diogeiton charged to the estate of his wards, he says: 'He has declared, gentlemen of the jury, that he bought a lamb for the Dionysia for sixteen drachmas, and he charged the boys for eight of these' (32.21). The argument depends on the jurors' knowledge that a lamb would only have cost eight drachmas. They should conclude that Diogeiton pretended to split the cost of the lamb with the wards but really contributed nothing himself, just as he did in the case of the wards' father's tomb (32.21).[57] Hence, the speaker can say, 'and so, in the midst of great losses, sometimes small things do not hurt the victims less, since they make the criminals' wickedness particularly evident' (32.21). The speaker calls special attention to the lamb not because

it is the most prominent example of Diogeiton's mismanagement of his wards' property, but because it is one that will allow the audience to draw a conclusion most easily based on what they already know. And by making the jurors come to a conclusion on their own, he adds credence to the charges he will continue to make about Diogeiton's looting of the estate, which will seem consistent with what the jurors have already inferred from the story about the lamb. This is especially relevant for his account of the trierarchy, where he will claim that Diogeiton committed a similar fraud involving larger sums (32.26–7).[58]

There is a similar strategy on a grander scale in *Against Timarchus*, where Aeschines takes full advantage of the audience's supposed familiarity with rumours about Timarchus to support his claims that Timarchus had been a prostitute. Rumour is 'without deceit', Aeschines says (1.127), and even, explicating Hesiod (*Works and Days* 763–4), a goddess worthy of trust (1.129–30). The jurors should accordingly rely on what they already know, or more precisely on what Aeschines says they already know, about Timarchus. 'So, call to mind, gentlemen, what rumour about Timarchus you have experienced. Isn't it the case that as soon as his name is said you ask the question, "Which Timarchus, the prostitute?"' (1.130). By putting this rhetorical question in the mouths of his jurors, Aeschines influences the way they will interpret whatever gossip they may remember having heard about Timarchus. He conceals this influence by implying that the jurors' supposed knowledge is actually independent, authoritative evidence.

Through tactics such as these, speakers make their arguments appear to coincide with what the jurors either know or are led to believe they know. This encourages the jurors to view themselves as characters who are participating actively, and seemingly independently, in the unfolding story of the trial. When they decide the verdict, they will feel like they are acting without bias or prejudice, when in reality they are merely following the speaker's prompting.

Conclusion

In this essay, I have argued that Athenian speechwriters and litigants encourage the jurors to see themselves as characters in stories that are progressing towards decisions in the litigants' favour. I have examined five methods that speakers use to create a story about the jury: (1) describing the jurors as though they are on trial themselves; (2) creating a corporate character for the jurors that sympathizes with the values and predicament of the speakers; (3) establishing the jurors' dependence on the speaker through the imperative and related grammatical constructions; (4) presenting the jurors as though they are the speaker's allies and (5) encouraging the jurors to reach seemingly independent conclusions when they are really being manipulated by the speaker. Although I have distinguished these five methods to make my analysis clearer, they contribute to a single storytelling strategy and, in practice, often overlap.

As with all forensic storytelling techniques, the significance of the story about the jury should not be overstated. It always works together with other techniques

and methods of persuasion, ranging from logical arguments, to presentations of evidence, to *enargeia*. On its own, a story about the jury would probably not have meant the difference between victory and defeat. It would have contributed to how the jurors understood their role in the trial and the way they interpreted the arguments of both litigants. A speaker who succeeded in making even some of his jurors believe that they were his allies, or that his case was favoured by public opinion, or that his arguments agreed with the jurors' own independent conclusions would have helped his own case and weakened his opponents'.

Notes

1 I am grateful to Dimos Spatharas and Mike Edwards for organizing a stimulating panel and for suggestions that improved this chapter, to the other panellists for advice, questions, and collegiality, and to my colleagues Thomas Biggs and Charles Platter, who kindly read and commented on my work in progress.
2 Heffer (2005: 69).
3 Throughout this essay, I use 'jurors' as an umbrella term for the judges in any of the procedures of the Athenian democracy that take the form of a trial, including the trials judged by *dikastai*, the homicide trials judged by Areopagites or *ephetai*, and the *dokimasiai* and *eisangeliai* judged by *bouleutai* or assemblymen.
4 Amsterdam and Hertz (1992: 64–75).
5 Sherwin (2000: 41–71); Spence (2005: 232); Amsterdam, Hertz and Walker-Sterling (2005–2006: 32); Meyer (2014: 38–41). On the way that narratives contribute to the cultural norms through which laws are understood, interpreted and enforced, see Cover (1983).
6 For instance, Sherwin 2000: 46 shows that Johnnie Cochran's closing argument in the O. J. Simpson trial urged the jurors to 'undo the injustices stemming from state racism and abuse of power – if the jurors have the courage and the fortitude to realize their ideals and principles'.
7 On the tragic elements of this narrative, see Apostolakis (2007) and Wohl (2010).
8 On the way that respect for 'extra-statutory norms' could influence Athenian legal decisions and, in a broader sense, maintain order in the city, see Lanni (2009).
9 E.g., Andoc. 1.144–5, 149–50; Lys. 19.61–63, 20.31; Dem. 28.24. On this plea for reciprocity, see Dover (1974: 292–5); Millett (1998: 229–39).
10 E.g., Aeschin. 1.117–18, 186–7, 3.247; Andoc. 1.140; Lys. 12.91, 22.19–21; Isoc. 18.42; Dem. 20.165–6, 59.110–11; Din. 1.22, 27, 2.19, 3.22; Lycurg. 1.14, 146. Plato's Socrates employs this trope when he says (*Apology* 38c) that his jurors will be accused of killing Socrates. Cf. Blyth (2000). Two of the most vivid descriptions of the jurors being judged come in sections 11 and 98 of the *First Speech Against Aristogeiton*, transmitted as Demosthenes 25. Because the speech may be a Hellenistic imitation, I have deliberately excluded it from my discussion. See most recently Harris (2018: 193–7) and the notes to his translation, and MacDowell (2009: 310–12).
11 Lanni (1997: 188–9) compares the audience's judgement to an 'informal *euthynē*' of the jurors. Cf. Eidinow (2007: 183–4).
12 Spatharas (2017a: 137–8), with specific reference to Aeschin. 1.186–7 and Dem. 59.110–12.
13 Dinarchus employs a similar sentiment at 1.3, 22, 27, 46, 66, 107. Worthington (1992: 306).
14 Lanni (1997, especially 188–9); Bers (1985). In *Against Demosthenes*, Dinarchus even asks a direct question of both the bystanders and the jurors (1.30).

15 Lanni (2012: 127–9). Cf. Ober (1989: 146–7).
16 Cf. O'Connell (2017: 153–4).
17 I am grateful to Dimos Spatharas for this point. See the discussion of this section in Spatharas (2017a: 137–8).
18 On this prediction as one of many warnings of 'potential doom' in Attic forensic oratory, see Roisman (2005: 40, 194–5).
19 Spatharas (2009).
20 On Lysias' method of reasoning here, see Mirhady (2015: 237–8). See Wohl in this volume.
21 On the interplay of public and private in this speech, see Kremmydas (2012: 292–3, 454).
22 Cf. Lys. 6.53 with the note at Todd (2007a: 473); Dem. 59.126; Martin (2009: 81, 192). See Bers and Lanni (2015: 137–42) on the minor role played by the gods in Athenian litigation.
23 Eidinow (2007: 165–90, especially 175–6); Riess (2011: 164–234).
24 O'Connell (2017: 166).
25 Cf. Wolpert (2003: 543–4).
26 Cf. O'Connell (2017: 110). Ober 1989: 149–51 sees these phrases as a reflection of democratic ideology, since they urge jurors to take into account what everyone knows, and Wolpert 2003: 540 sees them as a way of deferring to the jury's knowledge.
27 Felton Rosulek (2015: 168).
28 On the need for litigants to make arguments consistent with the jurors' worldview, see Herman (2006: 152–4).
29 If the manuscript reading παιδικῶν, 'boyfriends', rather than the emendation παιδιῶν, 'games', is correct, the parallel with the speaker's situation is even stronger.
30 On opportunities for non-elite Athenians to enjoy activities associated with the wealthy, especially symposia and membership in social clubs, see Fisher (2000).
31 On the widespread Athenian interest in beautiful boys and curiosity about their lovers, see Fisher (1998: 101). Even if Hubbard 1998: 60–1 is correct that the speaker expects the jurors to condemn his behaviour, the 'since you know' in 3.4 still frames the issue as one of embarrassment rather than crime.
32 As Davies 1971: 128 notes, Demosthenes' father was certainly within the liturgical class, even if Demosthenes exaggerates his estate at 14 talents.
33 Todd (2007b).
34 Todd (2007b: 341–3).
35 In a forthcoming essay, Carugati and Weingast argue that the jurors would have been representative of the full range of income and geographical distribution of the Athenian citizen population. I recently proposed (O'Connell (2017: 13–14)) that a core group of jurors would have lived in the city close to the courts. For an overview of different approaches to jury composition, see Hansen (1999: 184–5).
36 On the relationship between the cultural ideal of female seclusion and lived reality, see Cohen (1989); Pritchard (2014: 183–7).
37 See van Wees and Fisher (2015: 28–34).
38 Ford (1999: 251–5). Cf. Fisher (2001: 287–8).
39 For analysis of Demosthenes' attack on Meidias as an anti-democratic threat, see Ober (1996: 86–106); Fredal (2001: 259–65); Hendren (2015).
40 See Spatharas (2017b) for a discussion of how Demosthenes uses *enargeia* in *Against Meidias* to construct an 'emotion script' exciting the jurors' indignation, or 'legitimate envy' (τὸ νεμεσᾶν).
41 Miller (1892).
42 Fredal (2016: 37–8) suggests that imperative uses of ἐνθυμέομαι can call attention to something as 'a fact worth attending to'.

43 On the role of grammar in judicial storytelling, see Amsterdam and Bruner (2000: 150–2).
44 On Lysias 12 see Volonaki in this volume.
45 There is a similar tension between the apparent power of the jurors and the role of the speaker as a source of information near the end of *Against Timarchus*. Repeating κελεύετε three times, Aeschines tells the jurors to 'command' those who mistreat their own bodies to stop speaking before the *dēmos*, those who squander their inheritance to work and earn a living, and the hunters of boys to seduce foreigners instead (1.95). While 'command' seems to recognize the jurors' power to send a message by their vote, the things they are supposed to command all depend on Aeschines' interpretation of the case.
46 Meyer (2014: 32–3). Cf. Spence (2005: 53) on establishing what he calls the 'symbiotic relationship' between jurors and lawyers.
47 For a representative sampling of the language of teaching, see Ant. 5.8; Lys. 9.3; Isae. 7.4; Dem. 29.8.
48 On storytelling in this speech, see Psilakis in this volume.
49 O'Connell (2017: 109).
50 Christ (2012: 104).
51 Cf. Hermogenes, *On Invention* 4.12.
52 Cf. Fisher (2001: 167).
53 On the process of *enargeia* in this passage, see Webb (2009: 152–3); O'Connell (2017: 131–6). On *enargeia* in forensic narratives, see further Webb in this volume.
54 Meyer (2014: 40), quoting the title of Bruner (1973).
55 See Fredal (2016: 39–40) on 'inferential enthymemes' which lead to an 'aha moment' in the audience.
56 Hesk (1999: 220–6).
57 Carey (1989: 221).
58 See Gagarin in this volume.

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Chapter 7

Inciting *thorubos* and narrative strategies in attic forensic speeches

Noboru Sato

Introduction: evoking dikastic *thorubos*

In Classical Athens, forensic speeches were generally composed for delivery at real law courts, where the dikasts did not always listen to them quietly.[1] Athenian dikasts often loudly acclaimed, heckled and rebuked litigants and their *sunēgoroi*. According to a character in Aristophanes' *Farmers*, old men sitting at a law court would shout 'you're singing' at a defendant who was delivering a speech they thought was terrible.[2] A fourth-century rhetorical handbook, *Rhetoric to Alexander*, probably written by Anaximenes, explains the importance of anticipation (*prokatalēpsis*) and how to counter heckling from the audience (*thorubos*). When heckling occurs at the beginning of a speech, a law court speaker is recommended either to urge the dikasts to listen to both parties with a sense of impartiality or to complain about their disturbances. If heckling occurs in the middle of his speech, but only a few are raising their voices, the speaker is advised to tell the hecklers not to prevent the others from making a sound judgement, but to listen to the speech. However, when the majority of the dikasts create a disturbance, the author of the handbook recommends litigants supplicate for pardon.[3] The noisiness of the audience in the Athenian law courts could be stronger than a speaker could handle.

Some scholars have already discussed the phenomenon of *thorubos*, that is, the shouts and other kinds of noise made by the people in the assembly and law courts of democratic Athens. They have shown the habitual noisiness in Athenian public spaces, the disturbance of both symbouleutic and forensic speeches caused by the noisiness of the audience, and the participatory aspect of the audience's voice in the Athenian democratic decision-making process. Victor Bers assembled a large number of references to *thorubos* in the law courts (dikastic *thorubos*) and showed that the dikasts frequently expressed their emotions and judgements by raising their voices or making other kinds of noise in the middle of speeches.[4] Other scholars have focused on the similarity between the theatre and the court of law in Classical Athens and analyzed the various kinds of noise made by the audience as one of the phenomena in common of those two institutions.[5] More recently scholars have pointed out that the *thorubos*, especially in the Assembly, was an aspect of audience participation:

these scholars have highlighted its implications for the Athenian democracy.[6] However, Attic public speakers were not simply passive 'victims' of these kinds of noise. In fact, speakers addressing an audience in Athenian public spaces attempted not only to tranquilize their noisy audience,[7] but also to use the voice of the audience to their own advantage. Bers lists some cases in which a speaker requests the audience to raise its voice in a law court,[8] but the rhetorical functions of such requests have not been fully discussed. This chapter discusses how Attic orators skilfully used the audience's voice in the law courts.[9]

Extant examples of a speaker's request for his audience to raise its voice during the trial can be classified under the following two main categories, according to the contexts in which the audience's voice is incited:[10] (A) passages in which a speaker solicits dikastic *thorubos* as a response to his own speech and (B) passages in which a speaker urges his audience to make dikastic *thorubos* during his opponent's speech. Although they may appear to be similar phenomena, they had quite different rhetorical functions. First, I shall briefly survey the rhetorical functions of category (A). Subsequently, I shall focus on category (B) and investigate its rhetorical functions in more detail. It will be shown that dikastic *thorubos* in this category was quite common in the Athenian law courts and that customary narrative strategies of Athenian litigants heavily influenced the usage of dikastic *thorubos*.

Inciting *thorubos* during one's own speech

Examples of category (A) can be divided into two subcategories: (a) seeking the dikasts' approval to summon a *sunēgoros* and (b) others.[11]

(a) A litigant sometimes asks dikasts to invite him to call his own *sunēgoroi*.[12] With this, as Rubinstein (2000) argues, litigants presumably sought the informal consent of the dikasts to listen to their *sunēgoroi*.[13] A litigant could also show his deference to the dikasts by suggesting that they have the authority to grant permission to call *sunēgoroi*.

Moreover, although surviving speeches yield only three examples of a request urging the dikasts to invite a speaker to call his *sunēgoroi*, it seems likely that litigants (or their logographers) tactically deployed this type of remark: speakers presented themselves as *idiōtai*. Theomnestus, the prosecutor of Neaira, when asking the dikasts to permit him to call his *sunēgoros*, explained that the request was appropriate for a young man without experience in public speaking, like himself (Dem. 59.14). Lycophron also referred to his own inexperience in a public speech and his miserable situation when seeking the dikasts' permission to call his *sunēgoroi* (Hyp. 1, *Lycophron* 20). Aeschines suggested that Ctesiphon would ask the dikasts whether he should call Demosthenes as his *sunēgoros* (3.202) and also that the defendant expected to be regarded as *idiōtēs* at his trial in court (3.214). The litigant's characterization of himself as a man unaccustomed to speaking in

court presumably made it more likely that the dikasts would listen to his *sunēgoroi* with less antipathy, even when a skilful speaker came to the *bēma* as *sunēgoros*, such as Apollodorus or Demosthenes.[14]

(b) Litigants in Athenian law courts attempted to utilize the voices of the audience in other contexts, as well.[15] In the middle of his defence speech concerning impiety, Andocides asked the dikasts to show (δηλώσατε) their approval, if his speech seemed to them satisfactory up to that point, so that he could more zealously speak on other topics (1.33). Demosthenes, at the beginning of his speech against Aristocrates, asked the dikasts what they wanted him to speak about first among the three topics he had raised in the preceding sections (23.18–19). The orator, in his oration in defence of Ctesiphon, referred to Aeschines' allegation that Demosthenes would reproach the prosecutor with his guest-friendship (*xenia*) with the Macedonian king, Alexander. Having refuted the allegation, Demosthenes incited the dikasts to tell him whether they regarded the prosecutor as Alexander's hireling or his *xenos* (18.51–2).[16] At the trial of Demosthenes in the notorious Harpalus affair, one of the prosecutors urged the dikasts to tell him (εἴπατέ μοι) whether they believed that the defendant had performed some particular political activities without taking bribes (Din. 1.42–3).

It was impossible to control the audience's reaction completely. It seems difficult to ascertain to what extent any individual law court speaker expected his audience to raise its voice in a given situation. But if the dikasts and/or bystanders did indeed raise their voices upon the speaker's request, the speaker himself could extemporaneously respond to them as well.[17] It is true that speakers' responses may have been not really extemporaneous but carefully prepared before their cases came to court. However, when such attempts actively to involve the audience were made in contexts where the litigants were engaging in detailed narratives describing individual incidents or in dense argumentation on complex legal issues, the remarks that invited a verbal response from the audience on the spot could give a speech an unrehearsed quality.[18] In the early fourth century, Alcidamas, in his pamphlet on public speeches, criticizes those who deliver orations elaborately prepared beforehand and stresses the advantages gained by extemporaneous speaking.[19] The *logographoi* of fourth-century Athens, who must have known the merits of impromptu speech, may have tried to avoid monotony in their narratives by weaving an element of 'improvisation' into their written speeches to evoke an audience's response.

Inciting *thorubos* during the opponent's speech and the advantage of the party who spoke first

As shown previously, if dikasts and/or bystanders raised their voices immediately at a speaker's request, he could extemporaneously respond to them and effectively

add an element of improvisation to his speech. On the other hand, when a speaker attempted to incite dikastic *thorubos* not during his own speech but in the middle of his opponent's, the audience could not answer immediately but had to wait for the latter's turn. Such a request may still have stimulated the audience's emotions during the trial, but it presumably would not have had a similar effect of adding to the impression that the speaker was improvising. Thus, category (B) must have had different rhetorical functions from category (A).

When it came to inciting dikastic *thorubos* belonging to category (B), the party who spoke first seems to have enjoyed an advantageous position. In public cases, the advantage of the party who spoke first, that is, the prosecutors, is obvious, since each side made only one speech and there was no speech after the party who spoke second, that is, the defendant. This is also the case with the party who spoke first in a *diadikasia* trial. Likewise, in private cases, only the prosecutors could attempt to incite the audience to raise their voices in the middle of their opponents' *main* speeches. But, a defendant could also theoretically incite dikastic *thorubos* during his opponent's speech: since two speeches, that is, a main speech and a rejoinder, on each side were allowed in a private case, the defendant could invite the audience to raise its voice against his opponent's rejoinder.[20] However, utilizing dikastic *thorubos* in the middle of the opponent's rejoinder does not seem to have been attractive for Athenian litigants. In fact, almost all examples from category (B) occurred in the speeches delivered by the party bringing a suit, that is, by the one who spoke first.[21] The only exception that I have been able to find is Dem. 35.43. Androcles, who originally brought a suit against Lacritus, a Phaselite, spoke after his opponent, since the original defendant brought a counter indictment, *paragraphē*. Nevertheless, Androcles incited the audience to raise its voice against his opponent. After he suggested that Lacritus, a clever rhetorician and a pupil of Isocrates, could mislead the dikasts in whatever ways he wished, Androcles urged the audience to tell (κελεύσατε) his opponent to speak about the legal charge that he himself had originally brought against Lacritus. Presumably the speaker expected that if he were to win the *paragraphē*, the audience could respond to his request during Lacritus' speech at the trial concerning the original charge (*euthudikia*), which may have taken place after the *paragraphē* trial.[22]

The main benefit of inciting dikastic *thorubos* against the opponent's claims was to obstruct his speech. First, a speaker may have hoped that his audience would actually raise its voice in the middle of his opponent's speech as he had requested. The loud noise might even have made it difficult for those who spoke second, that is, for defendants to deliver their speeches as they had planned, as the *Rhetoric to Alexander* suggests.[23] Second, a prosecutor, who spoke first, could provide the dikasts with a framework within which they would interpret his opponent's claims. By requesting the dikasts to raise their voices, a speaker could at least draw their attention to particular points that he anticipated would be made in his opponent's speech. Even if the dikasts did not explicitly respond to his requests, the prosecutor could excite the audience's suspicion of the specific points of his opponent's claims by suggesting how those points were to be understood.

By contrast, the defending party in any type of trial could not utilize dikastic *thorubos* during his opponent's main speech. Although a defendant in a private case could incite dikastic *thorubos* during his opponent's rejoinder, no such case is attested among the extant law court speeches. Instead, defendants made more effort to cope with the incitement of dikastic *thorubos* by suggesting that their opponents had inappropriately solicited noisy responses from the audience and by entreating the dikasts to allow them to speak as they had prepared or asking them to listen to both parties equally.[24] This inequality between the two contending parties does not necessarily mean that a defendant, who spoke second, was always at a clear disadvantage. However, it seems highly likely that the party who spoke first was in a privileged position to incite dikastic *thorubos* in the middle of his opponent's speech.

Various strategies of inciting *thorubos* during the opponent's speech

Prosecutors in Athenian law courts seem frequently to have urged the dikasts to raise their voices, to ask questions or to bring forward a counterargument against a part or the whole of the defendant's claims. Extant Attic forensic orations provide a substantial number of examples in this category,[25] which strongly suggests that Athenian litigants frequently and strategically resorted to remarks that urged the dikasts to raise their voices against the other party's claims. Examples belonging to this category can also be divided into two subcategories: (a) discouraging the dikasts from listening to the opponent's *sunēgoroi* and (b) urging them to raise their voices against their opponent's claims.

(a) Thorubos *against the opponent's* sunēgoroi

Some prosecutors urged dikasts to raise their voices against their opponents' *sunēgoroi*.[26] Drawing attention to the inadequacy of the speeches expected from their opponents' *sunēgoroi* in one way or another, Attic law court speakers sought to discourage the dikasts from listening to them. By asking the dikasts to raise their voices in this context, the prosecutors may have expected that the dikasts would trouble their opponents' supporting speeches with their noise, or at least that a strong suspicion against their supporting speeches as a whole could be instilled in the dikasts.

In some cases, prosecutors described the unreliable characters of the supporting speakers of their opponents. Aeschines, when prosecuting Timarchus, categorized the defendant's *sunēgoroi* into three types, spendthrifts, male prostitutes and their unrestrained supporters or 'lovers', and urged the dikasts to order them to do something suitable to each of them but not to speak in the court of law (1.194–5). In his speech against Demosthenes, Dinarchus defined the defendant's supporters as either those who were ill disposed to the constitution of the polis or those who wanted to weaken the effect of the reports (*apophaseis*) of the Council of

the Areopagus against themselves, and he urged the dikasts not to listen to those *sunēgoroi*, but to order them to make defence speeches that would directly answer the charges (1.112–13).

In other cases, prosecutors sought to give the dikasts the impression that their opponents' supporting speakers were not reliable, by showing that they could or should have resorted to other legal proceedings rather than delivering supporting speeches in the court of law. When prosecuting Leptines' new legislation concerning liturgies and exemptions, Demosthenes urged the dikasts to tell (κελεύετε) the supporters of the new law to bring an indictment under the law that Demosthenes was proposing in the court, if someone did not deserve the rewards he had been granted, rather than making speeches in support of Leptines' law. The orator then suggested that the *sunēgoroi* would not do so, since they supported Leptines' law not because of its legitimacy but because of some personal enmity (20.136–7).[27] At the trial of Androtion for an illegal proposal, the prosecutor invited the dikasts to ask Archias, one of the defendant's *sunēgoroi* and a member of the Council from the previous year, whether he regarded the accusations brought against the Council as valid, and if not, why he had let them pass (Dem. 22.40). The speaker was obviously suggesting here that Archias should himself have taken action against the Council and that, since he had not, even this person who claimed to be honourable was not reliable, leaving aside the other *sunēgoroi* who would speak for Androtion and for the Council (38–9). At the *endeixis* trial of Theocrines, Epichares, the prosecutor, suggested that the defendant's supporters would refer to their enmity against Demosthenes (Dem. 58.44). Since the defendant himself seems to have prepared a narrative that he was the victim of a conspiracy and that the present trial had been initiated in order to prevent the prosecution he had brought against Demosthenes (23, 35), the characterization of the supporting speakers as enemies of Demosthenes could have made the defendant's story sound more persuasive. Against this claim Epichares urged the audience not to listen to their speeches but to order (κελεύειν) them to bring an indictment against Demosthenes, if they were truly his enemies, rather than support Theocrines who, according to Epichares, had already made peace with Demosthenes. Here the prosecutor tried to give the dikasts the impression that the supporting speakers would lie and, moreover, he was attempting to weaken the effect of the defendant's narrative concerning the prosecutor's alleged 'conspiracy with powerful politicians'.

(b) Thorubos *against the speaker's main opponent*

While there were various ways of making use of dikastic *thorubos*, as we have seen, the substantial number of examples belonging to category (B)-(b) suggests that Athenian prosecutors regularly and strategically attempted to incite the dikasts to raise their voices in order to undermine the whole or a part of their main opponents' claims.[28]

There seem to have been some common strategies available to Athenian prosecutors to encourage their audiences to raise their voices in the middle of their main

opponents' speeches. First, prosecutors anticipated one of their defendant's claims and urged the dikasts to make a question or a counterargument which indicated that the defendant's claim contradicted facts or laws.[29] For example, the prosecutor of the trial against Agoratus anticipated that the defendant would defend himself by claiming that he went to Phyle, that is, joined in those who fought for the restoration of Athenian democracy (Lys. 13.77). Against this claim, the prosecutor explained that those who fought for democracy from Phyle actually detested Agoratus, but did not kill him simply because Anytus, their leader, restrained them (77–8). Then, the speaker told the dikasts that they should ask the defendant (ὑπολαμβάνειν χρὴ) whether Anytus had saved him from people who had been ready to punish him and whether Aesimus, another leader of the democratic party, had not allowed him to join in the procession of the democratic party (82). By inviting the dikasts to ask these questions, the prosecutor sought to give them the impression that the defendant's claim was totally misleading. A *sunēgoros* of Phormion, ex-slave of Pasion, the famous banker, used the same strategy. When Apollodorus filed a case against Phormion over Pasion's estate, the prosecutor claimed that the will by which the guardianship of the estate was granted to Phormion was a forgery. At the *paragraphē* trial which Phormion brought against Apollodorus, Phormion's *sunēgoros* incited the dikasts to ask Apollodorus why he had received a tenement-house according to the will. The supporting speaker also pointed out that Apollodorus would not claim that all the clauses which his father wrote in his favour were valid, whereas the others were not (36.34). The speaker clearly sought to make the audience think that Apollodorus' acquisition of a part of his father's estate contradicted his claim that the will was fabricated by Phormion.

Second, prosecutors sometimes urged the audience to order their opponents to provide witnesses or to demonstrate a legal basis for their claim.[30] At the trial of Leptines' law, Demosthenes anticipated that the speakers on the side of Leptines would casually provide accounts of some foreigners as examples of honorands who were unworthy of an exemption (Dem. 20.131).[31] The orator then urged the dikasts to tell the defendants to show the decrees that had granted those foreigners an exemption. Demosthenes obviously intended to make the dikasts realize that the defendants would offer these stories without legal basis, since the prosecutor clearly knew that they had not submitted any evidence to support that claim at the preliminary hearing.[32]

Third, Athenian prosecutors frequently argued that the stories presented by defendants did not refute the legal charge from the prosecutor's point of view, and suggested that the audience should raise its voice so as to discourage the defendant from resorting to the 'unrelated' stories and to make him address the main legal issues.[33] Demosthenes, when prosecuting Aeschines on the dishonest embassy, anticipated that the defendant would deflect the charge made against him onto the Spartans, the Phocians and another Athenian politician, Hegesippus (Dem. 19.72). Demosthenes explained that what Aeschines would narrate about them had already happened before he had delivered his ambassadorial speech in the Athenian assembly, and that these narratives and arguments concerning

the Spartans and the Phocians did not constitute a proper defence. In this context, Demosthenes insisted that the dikasts should not listen to (μή … ἀκούετε μηδ' ἀνέχεσθε) such charges against other people and incited the dikasts to ask (ἐρωτᾶτε) what fault was committed after the rendering of Aeschines' report that prevented his promise in the assembly from being realized (75). Obviously, the orator did not expect the defendant to answer this question, but he sought to give the audience the impression that Aeschines' narrative and argument concerning the Spartans and the Phocians did not constitute an adequate defence to the legal charge made against him. Demosthenes also used this strategy in the trial against Timocrates for proposing an unsuitable law. In this oration, the prosecutor anticipated that the defendant would describe the merciful and humane nature of his new law, and he told the dikasts not to be led astray by such a claim, but to remember that the defendant would be telling a lie. Saying 'do not let him pick phrases out of his law and speak about them' (μὴ δὴ ταῦθ' ὑμῖν τῶν ἐκ τοῦ νόμου ῥημάτων ἐκλέξας λεγέτω) but 'let him explain his law as a whole' (ὅλον δεικνύτω τὸν νόμον), the speaker was presumably suggesting that the dikasts should raise their voices when the defendant selected and explained only phrases pleasing to the dikasts' ears while concealing the wider effects of his new law (Dem. 24.191). Soon after, he explained that laws regulating private matters should be humane but those relating to the politicians should be strict (193). He insisted that, if the defendant were to rely on the clemency of his law, the dikasts should reply to him (ἀπαντᾶτε) that he was introducing humanity into the latter kind of laws, not into the ones that were in the interest of the citizens. In other words, the prosecutor sought to make the dikasts aware that Timocrates' narrative on the humanity of his law was not an adequate defence against the legal charge. This was clarified by Demosthenes' assertion that the claims of the defendants were deceptive and misleading and that there were different points that should be refuted (194).

In many other cases, prosecutors did not discuss their opponents' claims in detail but indicated that their opponents' pleas would be mendacious, distracting and irrelevant, suggesting that the dikasts should pay attention only to the main legal issues. At the trial of Ctesiphon for proposing an unlawful decree, Aeschines asserted that the defendant would evade putting forward an honest defence, relying on undemocratic speech by his *sunēgoros*, Demosthenes, and instructed the dikasts how to deal with such speeches:

> When Ctesiphon comes forward here and recounts in front of you [i.e. the dikasts] that preface which has been arranged for him, then wastes time and makes no defence speech, remind him without *thorubos* (ὑπομνήσατ' αὐτὸν ἀθορύβως), that he should take the small board and collate the laws with his decree. If he pretends not to hear you, then you must not want to hear him, either.
> (Aeschin. 3.201)

In this case, after summarizing the defendant's speech as merely an introduction to the speech anticipated from his deceitful *sunēgoros*, a waste of time and

an inadequate defence speech, Aeschines suggested that the dikasts should require Ctesiphon to defend himself on the basis of the laws and his own decree. Later in the same speech, Aeschines shifted his focus to Demosthenes and incited the dikasts to

> request (ἀξιώσατε) Demosthenes, too, to defend himself in this way; first, against the law dealing with those who have to submit an account of their administration, second, against the law concerning proclamations and third, and most important, about the claim that he is by no means unworthy of the gift. (205)

The prosecutor then suggested that Demosthenes could not say anything sound and would insert stories irrelevant to the question of illegality in order to make the dikasts forget the legal charges, and again he demanded that they 'drive him into arguments concerning the charge of illegality (εἰσελαύνετε αὐτὸν εἰς τοὺς τοῦ παρανόμου λόγους), and watch for the digressions of his speech' (206). Here, Aeschines was anticipating that Demosthenes' speech would be full of digressions, and he asked the audience to force his opponent to speak only on issues related to the legality of Ctesiphon's decree and not to listen to other narratives.

Mantitheus son of Mantias, at the end of his speech against Boeotus, urged the dikasts to order the defendant to prove (κελεύετε … ἐπιδεικνύναι) either that the prosecutor's argument was not true, or that the prosecutor should not recover the marriage-portion, since these were the questions on which the dikasts were going to cast their votes (Dem. 40.60). Subsequently, Mantitheus claimed that if the defendant could not provide trustworthy witnesses, nor any other proofs regarding the primary legal issue, and if he were to try to introduce irrelevant arguments (ἑτέρους παρεμβάλλῃ λόγους) and, further, to cry and complain about something which had nothing to do with the main issue (βοᾷ καὶ σχετλιάζῃ μηδὲν πρὸς τὸ πρᾶγμα), the dikasts should not tolerate it (61). The prosecutor was here obviously asking the dikasts to pay attention only to the primary legal issue and not to tolerate the defendant's 'irrelevant' narratives.

At the trial of Aristocrates for making an illegal decree proposal, the prosecutor, Euthucles, based an important part of his prosecution on the fact that the defendant's decree ordered the arrest of anyone who killed Charidemus, the military leader, without mentioning any legal procedures, whereas the law courts for homicide cases were specified in the existing laws.[34] In the middle of his prosecution, the prosecutor claimed that the defendant would not be able to give any proper defence, since the decree was plainly contrary to the existing laws, but that he would resort to misleading and deceitful arguments. Euthucles anticipated that the defendant would argue that his decree had already lapsed by the time of the trial[35] and that a number of similar decrees had been passed (Dem. 23.90–7). After refuting these arguments, the prosecutor says:

> Do not let him tell you (μή … ὑμῖν ἐᾶτε λέγειν) what has happened with the decree, but how it should have happened. Nor let him say to you that other

> people in judging have validated those decrees [similar to Aristocrates' proposal] but you yourselves should ask them to show (ἀξιοῦτε διδάσκειν) that their plea is more lawful than ours [= the prosecutors]. If they are not able to do so, I do not think it right that you should make the deceit (ἀπάτην) of others more authoritative than your own judgment.
>
> (Dem. 23.98)

In this case, the prosecutor criticized the opponents' arguments in some detail, but the emphasis was clearly placed on how the defendants' arguments were misleading and the dikasts ought to pay attention only to the main legal issue.

Different narrative strategies between the two parties

As we have seen, Athenian prosecutors seem to have quite frequently used the third strategy. They often asserted that, since their opponents would not properly refute the legal charge, the audience should force them to address directly what they were accused of; and if they do not answer, the dikasts should not listen to the defendants' speeches. In other words, Athenian prosecutors frequently invited dikastic *thorubos* to emphasize the *ignoratio elenchi* of the other party.

This seems to be a result of a customary divergence of forensic narrative strategies between the two contending parties. As Johnstone (1999) convincingly argues, the two contending parties in classical Athenian law courts usually provided different narratives, each from his own perspective.[36] On the one hand, a prosecutor needed to present a 'legal' story, defining which act committed by his opponent was illegal and to construct a narrative focusing on that act and its severity. On the other hand, most Athenian defendants tended to offer 'counter-narratives', which redefined the context of the act, rather than simply denying their prosecutors' stories. For example, when accusing Lacritus of his breach of contract, Androcles argued that the terms of agreement between him and Artemon, Lacritus' brother, were not properly carried out, and that Lacritus was responsible for the failure. Androcles mainly narrated what his opponents, primarily Artemon, had done in contravention of the agreement. On the other side, Lacritus seems to have argued that he was not responsible for his brother's conduct, that Artemon's failure was caused by an accidental shipwreck and that they had made a contract with another Phaselite, to whom Lacritus probably could not repay his loan, either.[37] Although we do not have Lacritus' speech, it presumably included a narrative concerning the contract with the Phaselite, the shipwreck and an argument which denied his own involvement. As in this case, the two contending parties in an Athenian law court often constructed different lines of argument and delivered quite divergent narratives of their own. Furthermore, it is likely that stories about similar incidents that had not been punished were often included in defendants' speeches. Other themes were regularly included in the defendants' narratives, such as those about military and financial contributions to the city-state or their current piteous conditions, which may have served to demonstrate that the act of the defendant

did not deserve the punishment demanded by the prosecutor. Moreover, defendants often told stories about why the prosecutor had brought the case, even in the absence of any 'illegal' act. Therefore, it does not seem to have been enough for prosecutors to offer persuasive legal argumentation and narratives demonstrating their opponents' 'illegal' acts: it was also important for them to refute their opponents' alternative stories.

Dikastic *thorubos* was skilfully used for this purpose. As we have seen above, Athenian prosecutors often contended that their opponents' pleas were irrelevant and advised the dikasts to pay attention only to the main legal issues, by attempting to incite them to dikastic *thorubos*. In other words, Athenian prosecutors frequently urged the dikasts to raise their voices in the hope of undermining their opponents' narrative strategies, on the basis that each of the contending parties frequently delivered divergent narratives presenting the case from his own point of view.

The potential effect of this strategy is clearly revealed by a law court speech that accused the other party in a trial of trying to evoke dikastic *thorubos*. Hyperides, in his speech in defence of Euxenippus, claimed that prosecutors would normally exhort the dikasts to refuse to listen to any defendant who did not address the legal issues directly, to interrupt (ἀπαντᾶν) the defendant's speech and to tell the clerk to read out the law (10). Here, Hyperides explained this as normal prosecution behaviour in contrast with that of Euxenippus' prosecutor, Polyeuctus, who, according to the orator, wished to prevent the defendant from using the *nomos eisangeltikos* in his defence speech. Later, Hyperides accused the prosecutor of slandering Euxenippus over his attempt to wed his daughter to Philocles or his arbitration for Demotion. Presumably, Polyeuctus delivered these narratives to develop the characterization of the defendant. Following this complaint, Hyperides explained the prosecutors' intention:

> If the defendants leave aside the indictment (*eisangelia*) and defend themselves about the accusations which are irrelevant to the main issue, the dikasts will reply (ἀπαντῶσιν) to them: "Why are you telling us this?" But if they do not mention anything about these matters, the case will go against them, for any accusation that is not treated in a defence speech remains fastened on to the dikasts' anger.
>
> (31)[38]

Hyperides clearly revealed that dikastic *thorubos* could cause a defendant difficulty if he did not argue on the main legal issues as defined by his prosecutor or present a narrative closely related to it, but offered solely alternative narratives of his own. In reality, it was impossible to predict or control the audience's reaction. However, by asking the audience to force a defendant to argue only about the main legal issues, a prosecutor could draw the audience's attention to the defendant's 'irrelevant' narrative, and give the dikasts a strong impression that his opponent's narrative was irrelevant, unreliable or deceitful. Thus, Athenian litigants could undermine their opponents' narrative strategies.

This tactic must have been important in the actual law courts. It is true that delivering a more plausible narrative than the other party was an important means of persuading the dikasts and winning the trial.[39] However, unlike the case of a speech contest, presenting a persuasive narrative may not have been enough for Athenian litigants to win their cases. In order to defeat one's opponent in an actual law court, the pre-emptive measure of undermining the opponent's narrative must have been an important means, especially when the opponent could himself deliver a better narrative.

For this purpose, the party who spoke first tactically invited dikastic *thorubos* against their opponent. It is true that the defendants and their supporting speakers could also evoke the audience's voice in their own speeches in order to undermine their opponents' claims, as we saw in Demosthenes 18.51–2. Aeschines, in his own defence speech, picked up on one of the prosecutor's arguments and labelled it as inconsistent. Subsequently, he asked the dikasts to tell him what they would want him to speak about: he claimed that he did not know where to begin because of the alleged inconsistency of the prosecution as a whole (2.6–7). By this remark, the defendant presumably attempted to attack his opponent's argument by making it appear as inconsistent and unreliable. However, unlike what was the case for prosecutors, the number of attested attempts to incite dikastic *thorubos* in speeches delivered by defendants is very small. The difference may be explained in part by the fact that defendants did not have the same opportunity as prosecutors to incite their audience to interrupt their opponents' speeches by its loud noise (except in those types of procedure where both parties were allowed a rejoinder).[40] Thus, a defendant did not enjoy a similarly advantageous position when it came to utilizing dikastic *thorubos* as a means of undermining their opponents' narrative strategies.

Conclusion

Speakers in Attic law courts were not simply perplexed by the noise made by dikasts and bystanders: they also sought to use it to their own advantage. Inciting the dikasts to raise their voice during one's own speech was not uncommon. When calling his *sunēgoroi*, a litigant could ask his audience to voice their approval through *thorubos*, and by this means he could display his deference to the dikasts, adding his characterization of himself as a man who lacked experience in public speaking. There were many other ways that Athenian litigants urged their audience to raise its voices during their own speeches. However, speakers in Attic law courts, especially prosecutors, much more frequently attempted to make their audiences engage in dikastic *thorubos* in the middle of their opponents' speeches. By doing so, an Athenian prosecutor might hope that the audience would obstruct the defendant's speech with its voice, and he may also have sought to give the dikasts the strong impression that the defendants' narratives were completely irrelevant to the main legal issues. On the basis that the two contending parties tended to deliver divergent narratives of their own, Athenian

prosecutors pre-emptively sought to undermine their opponents' narrative strategies by making use of dikastic *thorubos*.

Narratives played a very important role in forensic speeches in the Attic law courts, just as they did in other genres of ancient Greek literature. However, the treatment of narratives in forensic speeches developed in accordance with the actual environment in which the speeches were supposed to be delivered. Presenting more persuasive narratives may not always have been enough for Attic litigants to win a trial. It was also important to anticipate and undermine their opponents' narrative strategies. Attic litigants often used appeals to dikastic *thorubos* precisely for this purpose. Especially for Athenian prosecutors, inciting the audience to raise their voice against the defendants so as to undermine their opponents' 'counter-narratives' was surely an important strategy for securing victory.

Notes

1 Some speeches that have come down to us may not have been written for actual delivery, but it is likely that they were composed in accordance with the conventions that applied in the Athenian law courts, thus bearing a close resemblance to the speeches that were delivered in a real court of law. Although at least some of the extant speeches were revised before circulation, the authors very likely revised them in ways that still suited the reality of the Athenian law court. On revision for publication, generally see, for example, Trevett (1996); Worthington (1991).
2 Aristoph. *Georg*. fr. 7 Dem =124b H-G. Bers (2009: ch. 4) argues the implication of 'singing' in Athenian law courts. Cf. Bers (1985: 3).
3 [Arist.] *Rhet. Alex.* 18.5, 8–9, 1433a35–b30. On the *Rhetoric to Alexander*, see, for example, Chiron (2009).
4 Bers (1985).
5 Hall (1995, 2006); Villacèque (2013a, 2013b).
6 Tacon (2001); Wallace (2004); Villacèque (2012); Thomas (2011, 2016).
7 In surviving forensic speeches, there are only a few explicit remarks aiming to prevent the audience's noise, such as μηδεὶς θορυβήσῃ (e.g., Lys. fr. 426 (Carey); Isoc. 15.20, 272; Dem. 57.50; Lycurg. 1.52). This is in striking contrast with those in the symbouleutic speeches including the Demosthenic *prooimia*. Attic orators must have generally thought that such remarks should not be included in the published version of their forensic speeches, except in some special cases.
8 Bers (1985: 10–12).
9 Since my argument is not affected by the authorship of individual speech, I do not mark spurious speeches with square brackets.
10 I examine cases in which Attic orators explicitly urge the audience to raise its voice. Remarks such as 'do not tolerate' (μὴ ἀνάσχησθε) may have urged the audience to make noise, but not necessarily.
11 Speakers asked the audience from time to time to 'bear witness' to his claim (e.g., Andoc. 1.46, 69; Isae. 5.20; Dem. 47.44, 50.3; cf. Din. 1.42). Bers (1985) regards the response of the audience to such a request as a kind of dikastic *thorubos*. While it is not unlikely that some of the dikasts expressed their agreement with their own voices, they could respond without raising their voices. Even just nodding heads may have been enough for dikasts to give their fellows the impression that they could confirm the speaker's statement or the testimonies. Cf. Dem. 21.139.
12 E.g., Dem. 34.52, 59.14; Hyp. 1, *Lycophron* 20. Cf. Aeschin. 3.202.

13 Rubinstein (2000: 56–8).
14 Bers (1985: 10 n. 37) rightly, in my opinion, assumes that the strategy at Dem. 59.14 is 'to disarm antagonism to Apollodorus by making the jury feel that it has consented to his participation'.
15 Andoc. 1.33; Aeschin. 1.70, 159; 2.7; Dem. 18.52, 23.18–19; Din. 1.41–3; Hyp. 4, *Eux*. 40; Cf. Dem. 58.7.
16 *Scholia Demosthenica* 104a–c report some anecdotes, according to which the audience on the spot somehow responded to Demosthenes, when he asked the question. On this episode, see Serafim (2017a: 53, 2017b: 36).
17 Attic litigants and their *logographoi* presumably used various means to avoid being embarrassed by their failure to make the audience raise its voice. They could arrange beforehand with some people that they would raise their voices as the speakers wished, at least just outside of the court. Speakers may have omitted the passages which invited the audience to raise their voices, if they noticed an antipathy among the dikasts. If, on the contrary, the litigant anticipated on the spot that the dikasts would raise their voices at his request, the speaker could confidently incite them to raise their voices.
18 Alternatively, a passage which evoked the audience's response could have been added afterwards to the edited version, whether it was uttered in the law court or not. Even in such a case, the *logographos* must have thought that this type of improvization should be included in a speech to be delivered in a law court.
19 On Alcidamas' *On Those Who Compose Written Speeches*, see, for example, Schloemann (2002). Dorjahn (1950) analyzes extemporaneous elements within Demosthenes' orations.
20 MacDowell (1978: 249); Dem. 19.213, 27–8, 30–1, 48.51; [Arist.] *Ath. Pol.* 67.2.
21 Prosecutor: Lys. 12.39, 13.76, 82, 89; Isoc. 17.28; Isae. 3.66–7, 6.62, 65, 10.14, 23–4; Aeschin. 1.195, 3.16, 23, 48, 198, 201–2, 203–5, 208, 209, 249; Dem. 19.75, 89, 147, 20.131, 136, 21.24ff., 204, 22.4, 10, 23, 33, 34, 41, 23.93, 98, 219, 24.193, 27.51, 59, 39.35; 40.60, 45.87–8, 49.39, 63, 56.31, 58.25–26, 44; Din. 1.113; Hyp. fr. 21; Lycurg. 1.143. Prosecutor of a *paragraphē* trial (originally defendant): Isoc. 18.40; Dem. 33.35–6, 36.34, 60, 38.27. A disputant of a *diadikasia* trial: Dem. 43.33–5 (the speaker spoke first); defendant of a *paragraphē* (originally prosecutor): Dem. 35.43.
22 No contemporary text clearly mentions the procedures after a *paragraphē* trial. Wolff (1966: 84–5) argues that if a trial of *paragraphē* was unsuccessful, a hearing of the original issue took place on the same day, before the same dikasts. MacDowell (1978: 215) argues that a hearing of the original issue was held on a later day. Carawan (2011) argued recently that there would have been no second stage, which seems less convincing. If Wolff is right, Androcles' requests are easy to understand, but MacDowell's opinion still seems possible although, in this case, if the dikasts were different, the requests may have sounded less realistic, being more of a rhetorical performance.
23 See note 3.
24 For example, Aeschin. 2.1; Dem. 18.2 (cf. Aeschin. 3.201–6); Hyp. 1, *Lycophron* fr. 2.
25 See note 21.
26 Aeschin. 1.195; Dem. 20.136, 22.41, 58.44; Din. 1.113. Demosthenes was the *sunēgoros* of Ctesiphon at the crown trial. But Aeschines also treated Demosthenes as the main opponent. I classify such a case under category (B)-(b).
27 In this case, Leptines' *sunēgoroi* were elected by the Assembly. In this respect, they were different from most other *sunēgoroi* who appeared at the behest of the litigants they were supporting.
28 Lys. 12.39, 13.76, 82, 89; Isoc. 17.28, 18.40; Is. 3.66–67, 6.62, 65, 10.14, 23–4; Aeschin. 3.16, 23, 48, 201–2, 203–5, 208, 209, 249; Dem. 19.75, 89, 147, 20.131, 21.24, 204, 22.4, 10, 23, 33, 34, 23.93, 98, 219, 24.193, 27.51, 59, 33.35–6, 36.34,

60, 38.27, 39.35; 40.60, 43.33–5, 45.87–8, 49.39, 63, 56.31, 58.25–6; Hyp. fr. 21; Lyc. 1.143.

29 For example, Lys.13.82; Isoc. 17.28; Is. 3.66–7; Aeschin. 3.16, 23, 48, Dem. 22.10, 23.93, 24.193, 36.34, 49.63.

30 For example, Is. 10.14; Dem. 20.131, 33.35–6, 49.39; Hyp. fr. 21. Cf. Lys. 13.76.

31 On the status of these foreigners, see Kremmydas (2012: 402–5).

32 Both parties were required to submit all the pieces of evidence at an *anakrisis*. On this point, see Thür (2005, 2007, 2008).

33 Lys. 13.89; Isoc. 18.40; Is. 6.62, 65, 10.23–4; Aeschin. 3.201–2, 205, 249, Dem. 19.75, 21.24–8, 22.23, 33, 34, 23.98, 219, 24.193, 36.60, 38.27, 40.60, 43.33–35, 56.31, 58.25–6.

34 On Euthucles' argument, see, for example, MacDowell (2009: 198–202).

35 23.92; cf. Rhodes (1972: 62–3).

36 Johnstone (1999).

37 Dem. 35.

38 Hyperides further argues that a defendant will also encounter difficulties, if he replies only to the main legal issues. However, as Johnstone (1999) argues, most Athenian defendants preferred to deliver alternative narratives. It may have been unrealistic for defendants to argue extemporaneously what their opponents defined as the main legal issue. If so, Hyperides may have referred to this possible difficulty as an excuse for the defendants to deliver their speeches as had originally been planned. Athenian defendants occasionally asked the audience to allow them to deliver their defence speech as they wished (e.g., Hyp. 1, *Lycophron* fr. 2).

39 On the importance of narratives, see, for example, Gagarin (2003); Edwards (2004); Wohl (2010) and other chapters in this volume.

40 Since a defendant in a private case could theoretically urge the dikasts to raise their voice only in the middle of his prosecutor's rejoinder, he could not utilize dikastic *thorubos* in order to undermine the narrative strategies of his opponent's main speech, which seems to have been a great disadvantage for these defendants.

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Chapter 8

Political ideology and character portrayal in Apollodorus' forensic narratives

[DEM.] 50 *Against Polycles*[1]

Kostas Apostolakis

The historical and legal background

Apollodorus, known as the 'Eleventh Orator', was the son of the banker Pasion, who was initially a slave but managed to acquire first his freedom and later Athenian citizenship. Being a rich citizen, Apollodorus had undertaken several public services. He had been commander of a trireme (trierarch) in 368/7 around the Peloponnese, and again in late summer of 362 in the North Aegean. In the same year he had also undertaken the liturgy of *proeisphora* ([Dem.] 50.8–10), and ten years later, in 352/1, he was a victorious choregus at the Dionysia.[2] It was during Apollodorus' trierarchy in 362 that the dispute between him and Polycles arose. Polycles, the son of Polycrates, was a member of a wealthy Athenian family belonging to the liturgical class.[3] The members of this family appear many times as liturgists throughout the fourth century. Polycles himself is first attested as councillor in 367/6, and sometimes as a joint trierarch (syntrierarch). During one of his joint trierarchies, in 361, he was nominally appointed to succeed Apollodorus, a succession which caused the dispute between the two men. A few years later, in 357, Polycles appears again as a syntrierarch, and Davies concludes that he bequeathed his estate intact to his son Aeschraius, who also undertook various liturgies in the last decades of the fourth century.

The speech *Against Polycles* ([Dem.] 50) was delivered sometime between 360 and 358 BC by Apollodorus,[4] in his attempt to recover the money he had spent during his extra six-month service (*epitriērarchēma*) as a trierarch two years earlier. He had been forced to remain in his position beyond his own term, because Polycles, his officially appointed successor, refused to take over the ship. The form of the legal action which Apollodorus initiated against Polycles is not clear. It has been suggested that it was a *dikē triērarchikē* ('a suit dealing with trierarchies') or, alternatively, a *dikē blabēs* ('suit for damages'), which provided double compensation for the prosecutor, if successful. In both cases it was formally a private trial. It was typical for the city to shift the responsibility for settling problems concerning the performance of the liturgies onto the liturgists themselves, turning a public-interest issue into a private debate. This tendency of the Athenian system was also evident in the *antidosis* procedure, which gave citizens who claimed

insolvency the right to dispute their being assigned a liturgy and nominate themselves a substitute.[5]

Against Polycles has often been studied as a source for the trierarchic liturgy, and the manning and equipping of the Athenian fleet in the fourth century.[6] In this chapter I will attempt to show that the arrangement, the structure and the content of the extensive narratives of the speech both reveal embedded ideological tensions and preoccupations, and at the same time contribute significantly to a suitable characterization of both litigants.

First, in order better to appreciate Apollodorus' strategy in this speech, it is necessary to investigate the potentially weak points of his case. It seems that there is no hard evidence that Polycles had breached the laws on successor trierarchs. It is true that in **57** Apollodorus promises to have this law read out, so the jurors will realize that Polycles has broken the relevant law, which imposes severe penalties for not taking over a ship at the stipulated time. But this law is never read out by the clerk and it has been suggested that there is a gap in the manuscripts.[7] It seems, however, that delays by successors and subsequent prolonged periods of service for the predecessors were far from uncommon.[8] In 361, in particular, these replacements were late for additional reasons, mainly due to the threatening presence in the Aegean of the fleet of the tyrant Alexander of Pherae.[9] An additional reason which seems to have caused further delays in taking over the ships was the practice of many new trierarchs of hiring out their liturgies, as in the case of Phrasierides (see below).

A plausible suggestion is that the law did not provide clear-cut regulations in case of a prolonged service. It seems that, especially under irregular circumstances, delays in taking over the vessels were not thought to be contrary to law. Such issues were considered private matters, to be arranged between the predecessor and the successor trierarch, who should negotiate and come to an understanding concerning the *epitriērarchēma* and the relevant compensation.[10] As is stated in the speech (**33**), many trierarchs had visited the general's house at Thasos, and some had probably found themselves in the same situation as the speaker. Apollodorus narrates a telling story in this speech, concerning quite a similar case, which was settled amicably without causing debates and trials (**41–2**). More specifically, it is said that Mnesilochus and Phrasierides were to be the replacements for Hagnias and Praxicles at the same time. But, whereas Mnesilochus did join the vessel with some delay, Phrasierides did not appear at all. Mnesilochus finally took over the vessel, rented the gear from Hagnias and compensated him for his extra period of service. Moreover, representatives from Phrasierides later appeared and reimbursed Mnesilochus a portion of his expenses and for the remaining time. This short story, which is set out to provide an ideal model for the settlement of such controversies, invites the audience to compare this case with Apollodorus' inconvenience. Against this story, however, Apollodorus' case may be interpreted in two opposite ways: either Polycles was indifferent and irresponsible, or his refusal to take over the ship might not be totally unjustifiable.[11] It seems that Apollodorus was uncompromising in demanding full compensation for his additional expenditures, and

Polycles was reluctant to follow him in his splendid and extravagant expenses, and to pay an amount disproportionate to the usual trierarchies. Notably, Timomachus, the general responsible for the Athenian squadron, refused to oblige Polycles to take over the ship; on the contrary, he ordered Apollodorus to continue his service. Besides, as long as the successor had not undertaken his duty, it was Apollodorus who was obliged to remain with the trireme and perform his duty, since, if he abandoned the ship, he was liable to a *graphē lipotaxiou*. Hence, he is at pains to argue that he remained in his position (**63**).[12]

Narrative in *Against Polycles*

The prevalent opinion among earlier scholars about Apollodorus' narratives was that they are sometimes too long and on some points irrelevant.[13] These narratives also seem to deviate from theorists' prescriptions, who insist that the narration must be clear, plausible and brief (e.g., Anaximen. *Rh. Al.* 38.6; Quint. 4.2.31). Indeed, in a sample of Demosthenic private speeches the proportion of narrative is around 15%, whereas in Apollodorus it is 55%.[14] However, a long narrative supported by witnesses has a persuasive force by itself and substitutes for argumentation, because it allows the facts to speak for themselves. Besides, recent research suggests that a reappraisal of Apollodorus' narratives is needed. It has been argued that the divergence of Apollodorus' narratives from the handbooks of the ancient rhetoricians might be less than was usually thought.[15] More importantly, it has been convincingly pointed out that Apollodorus' narrative skills include a variety of inventions and techniques, such as the fabrication of a good story,[16] and also performative elements which are intended to support the delivery and captivate the audience.[17]

The narrative of *Against Polycles*, in particular, is proportionally the longest in the corpus of Apollodorus (**4**–**62**, i.e., 58 paragraphs out of 68, nearly 85% of the speech). Instead of relying on a systematic argumentation to refute his opponent's assertions, Apollodorus narrates selective incidents from his trierarchic experience, which contain positive and negative protagonists. This option allows personal characterization, and is thus in line with Aristotle's suggestion (*Rhet.* 3.16.8, 1417a16–19) that narration ought to reveal character, on the basis of what sort of deliberate choice has been made.

Moreover, through his narrative Apollodorus sets out both his own and his opponents' viewpoint, and he actually subordinates argumentation to narrative. In particular, he chooses to narrate sensitive matters such as the fact that he is a naturalized citizen and the associated concerns of native Athenians; also, to highlight his own eagerness to offer the best for the city and to expose the selfish motives of his opponent. He seems to be inviting the audience to interpret each phrase of his narrative on the basis of ideological and political criteria and to decide on the grounds of the interests of the city. In so doing, he manages to treat these matters in a more subtle way than by using complex argumentation. The most effective narrative technique is the elaborate use of direct discourse, which conveys in an immediate and entertaining way the *ēthos* of the litigants and supports an

ideological interpretation of the described incidents.[18] This speech, indeed, contains the most extensive use of direct speech in the whole corpus of Apollodorus.[19]

From the very beginning, the speaker asks the jurors to be understanding when listening to the following long narration (**2** ἐὰν διὰ μακροτέρων διηγῶμαι), since it is necessary to understand all the parameters and realize the public dimension of his case and the crucial matters at stake. Moreover, by dividing the audience into two groups, those who were present at the events and those who stayed in Athens, he defines the addressees and the twofold function of his narration, which must succeed both in reminding the former and informing the latter of his actions and, more importantly, in showing how they were all opportune and in the city's interests (ἐν καιρῷ καὶ χρήσιμοι τῇ πόλει). In keeping with his programmatic declarations, Apollodorus will narrate – however briefly, since they are supposedly recent – selected incidents regarding the emergent situation in the Aegean, including the vote for trierarchs to launch their ships in order to bring help and deal with the issue. The sequence and the arrangement of the material in the narrative sections are also indicative of Apollodorus' use of narrative as a means of persuasion.

In the introductory section of his narrative (**4–6**), Apollodorus sets the scene of the military affairs in the Thracian Chersonese. This description associates his own private controversy with circumstances crucial to the city. He reminds the jurors that grain was fetching a high price in Peiraeus at the time and the supply for sale was limited. By using a *praeteritio*, he says that it is not necessary to describe this situation, since jurors should recall it themselves, but in the course of his speech he reminds them that Tenos had been captured by Alexander of Pherae, and that Miltocythes had revolted against the Thracian king Cotys and requested that the Athenians help him, promising to return the Chersonese to them. Meanwhile, the Proconnesians were being attacked by Cyzicus and implored the Athenians, their allies, to help them. The Athenians voted to send out an expedition quickly in order to remedy the situation and assist where necessary. The Athenian jurors would obviously understand that the Chersonese, and in particular the *Hieron Oros* (Sacred Hill), which was under Miltocythes' control, were of strategic value to Athens for the grain trade.

Far more extensive is the exposition of Apollodorus' initiatives when appointed trierarch. He sets out his expenditures for the manning and preparation of his trireme in the best possible way, even admitting that he had to pledge his property in order to spend lavishly on the trierarchy. Indeed, his expenses were quite extraordinary, compared with the increasing reluctance of wealthy Athenians to undertake expensive liturgies in the course of the fourth century.[20] Moreover, due to the good condition of his ship, he was ordered to undertake additional duties, including bringing the ambassadors back to Athens. For all these services the Assembly invited him to dine at the *prytaneion* (**7–13**).

In the following sections Apollodorus tells the story of his dispute with Polycles. Although from a procedural perspective the case is private, the public dimension of a dispute concerning a liturgy is self-evident. Accordingly, throughout the narrative, private and public are systematically interwoven and some ideological attitudes and prejudices emerge concerning the relationship

between the citizen and the polis. It is worth noting that the narrative is dotted with ideologically and politically charged words and slogans and that the public perspective is ubiquitous, even on the most private issues. The narrative includes several attempts, both by Apollodorus himself and by his friends and relatives, to persuade Polycles to carry out his duties. It also contains some exciting and entertaining incidents, marked with narratorial signs and interventions and dotted with passages highlighted with *oratio recta*.

In particular, competition for honour, which was typical of the old-style Athenians and was tellingly called *philotimia,* is prevalent in this dispute and the two litigants attempt to exploit its ambivalent nature. Apollodorus constantly ascribes to himself a positive *philotimia*, when he claims that his ambition, which is demonstrated through his public services, is to the advantage of the city as a whole, and reciprocally demands the gratitude he deserves for his public services.[21] Moreover, he sees his lavish public performance as an additional obligation of a citizen who has recently received citizenship, and as both a form of gratitude and a promise for future performances.[22]

Polycles, from his point of view, seems to have a different, more selfish, interpretation of Apollodorus' *philotimia*. This is obvious in the part of the speech where Apollodorus narrates his encounter with him on Tenedos (**54**). In the presence of witnesses, Apollodorus demanded that Polycles take over the ship, to prevent him from claiming later that his predecessor refused to hand it over, but was planning to sail home and show off his expenditures to the people out of a spirit of rivalry (φιλοτιμούμενος).[23] According to Polycles, therefore, Apollodorus' *philotimia* is just a selfish display of wealth.

Polycles' attitude to Apollodorus is best revealed in a narrative section describing Apollodorus' second arrival at Thasos. On that occasion, he visited the house where the general Timomachus was staying, in order to hand over the ship officially, in the general's presence. Polycles was also there, together with the other trierarchs and citizens. Apollodorus demanded that Polycles take over the ship and pay him back for what he had spent during his extra period of service. Polycles asked Apollodorus why he was the only trierarch who had his own gear and had not had it provided by the city. At that point, the narrative suddenly turns into direct speech with loosely constructed language,[24] and Polycles appears to attack Apollodorus, on the ground that he alone of the trierarchs, acting as an arrogant parvenu, had lavishly equipped and decorated his ship. Moreover, Polycles intimates that a *civis novus* like Apollodorus should not attempt to defeat old-style Athenians in the performance of liturgies,[25] and accuses him of arrogance and luxury; he also accuses him of corrupting the crew, contributing to a fall in discipline and setting a bad example:[26]

> ἢ σὺ τοσοῦτον' ἔφη 'ὑπερπέπαικας πλούτῳ τοὺς ἄλλους, ὥστε καὶ σκεύη ἴδια ἔχειν καὶ κόσμον χρυσόπαστον μόνος τῶν τριηράρχων; τίς ἂν οὖν δύναιτ'' ἔφη 'τὴν σὴν μανίαν καὶ πολυτέλειαν ὑπομεῖναι, διεφθαρμένον μὲν πλήρωμα καὶ εἰωθὸς ἀργύριον πολὺ προλαμβάνειν καὶ ἀτελείας ἄγειν τῶν νομιζομένων ἐν τῇ νηὶ λῃτουργιῶν καὶ λοῦσθαι ἐν βαλανείῳ, τρυφῶντας δ' ἐπιβάτας καὶ ὑπηρεσίαν ὑπὸ μισθοῦ πολλοῦ καὶ ἐντελοῦς; κακῶν δ',' ἔφη, 'διδάσκαλος

> γέγονας ἐν τῷ στρατεύματι, καὶ αἴτιος εἶ μέρος τι καὶ τοῖς ἄλλοις τριηράρχοις πονηροτέρους εἶναι τοὺς στρατιώτας, ζητοῦντας ταὐτὰ τοῖς παρὰ σοί· ἔδει γὰρ σὲ ταὐτὰ ποιεῖν τοῖς ἄλλοις τριηράρχοις.
>
> (34–5)

> "Or", he asked, "are you so much richer than the others that you have your own gear and are the only trierarch to sport gilded ornamentation? Who", he went on, "could put up with your crazy extravagance? A corrupt crew, used to big advance payments, getting out of the usual chores of shipboard service, and bathing in tubs, marines and skilled seamen coddled in soft luxury from getting lavish wages paid in full? You are teaching the army", he said, "evil habits and bear some responsibility for the other trierarchs getting worse soldiers: they're looking to get the same deal that your men get from you. You should have been doing the same as the other trierarchs".

Apollodorus could certainly refute Polycles' attack and defend himself explicitly, for instance by arguing that a created citizen has to express his gratitude to the city at every moment, even by appearing overeager in performing public services.[27] On the contrary, however, he decides to cite Polycles' indignant and sarcastic wording without supporting it with arguments, in order to reveal without mediation the envious character of his opponent and his refusal to participate in the competition among the members of the elite, which is to the benefit of the city and the masses.[28] He probably believes that direct speech is more suited to conveying both the character and the ideology of a person than elaborate argumentation. However, it is a reasonable question whether these words were actually uttered by Polycles. One might suspect that the words that Apollodorus puts into Polycles' mouth reflect recognizable stereotypes about the ways in which wealthier citizens responded (or were thought to respond) to the burden of liturgies.

Furthermore, it seems that the quoting of Polycles' supposed attack is well chosen rhetorically, in the sense that it is expected to alienate Apollodorus not from the masses, the poorer members of the audience, but from the members of the elite who undertook liturgical services. In particular, the assertions that Apollodorus has provided lavish wages for his crews in advance and that the rowers bathe in tubs, indicate Apollodorus' care for his crew (and, consequently, his concern for the demos)[29] and would probably have been approved of by the majority of the jurors, some of whom had probably been rowers in the past and knew the associated difficulties. These exaggerated assertions are answered by another exaggeration: Apollodorus' refutation focuses on the necessity of paying the crews well, and he challenges his opponent to get a crew of his own of a kind that will sail with him without pay. Hence, his opponent's accusations enable Apollodorus to praise himself without offending his audience. At this point Polycles' refusal to take over the ship is expressed with a dramatic declaration in direct speech, which abruptly breaks off a narrative section in indirect speech (**37**: οὔκουν παραλήψομαι μόνος τὴν τριήρη, 'and I will not take over the

trireme by myself').[30] It is obvious that in such tensions within the liturgical class, Apollodorus attempts to show through his narrative that what he is doing – even though extravagant – is to the advantage of the Athenian people.

In addition, Apollodorus complains that, despite his ambition to man the ship with good rowers, he has suffered more desertions than the other trierarchs. Remarkably enough, unlike his severe criticism of Polycles, Apollodorus seems to understand the sailors who deserted, on the grounds that they lost heart due to bad weather, and the inability of the general and the state to provide them even with their daily subsistence; the only help they received came from Apollodorus, who borrowed from his friends to give them a little supplement. Accordingly, Apollodorus avoids casting moral aspersions on their behaviour, and admits that when sailors are not paid, they are prone to desert, since they are unable to feed their families while at sea (**23**).[31] Apollodorus' excuse and lenient treatment of the deserters on the one hand anticipates accusations of maltreating them and, on the other, is a gesture attempting to win over the jurors of low social class, against the elite trierarchs. A similar view occurs in the speech *On the Trierarchic Crown* (Dem. 51.11), probably delivered by Demosthenes. There the orator questions the imprisonment of poor sailors who desert, whereas rich trierarchs, who are well paid by the state for each and every naval expedition, do not personally sail with their ships.

The long part of the narrative in **14–23** is a detailed account of the successive difficulties and dangers faced by Apollodorus during his period of extra service (*epitriērarchēma*), because of Polycles' refusal to succeed him in the command of the ship. The speaker is at pains to stress that it is important for the jurors to know how burdensome the initial liturgy and the additional expenses were (**21**). But, when he narrates the extremely difficult situation of his exhausted soldiers, who had to confront the Maronites in a storm, without access to a harbour, and were forced to ride at anchor all night on the open sea without food or sleep, his narrative is suddenly accelerated, in a passage where loosely constructed genitive and accusative absolutes are piled on top of one another (**22**).[32] This account breaks into a loaded passage, dotted with direct questions.[33] Here, again, Apollodorus understands the soldiers' reaction and avoids incriminating them, probably in order to alienate the jurors from Polycles and win over those who were likely to have experienced similar conditions themselves.

In **43–52**, Apollodorus feels that he must explain to the jurors Timomachus' decision not to force Polycles to take over the vessel. As the narrative proceeds, it becomes clear that Timomachus was resentful of Apollodorus because the latter refused to transport the exiled politician Callistratus, a kinsman (probably son-in-law) of Timomachus, from Methone to Thasos. More specifically, the officer Callippus approached Polycles and ordered the pilot of the vessel to sail to Macedonia. When Apollodorus was informed of whom they were about to transport, he called Callippus and declared his determination not to obey, since Athenian law prohibited the transportation of fugitives. This statement is cited in direct speech: ἐγὼ οὖν τῶν φευγόντων οὐδένα ἄξω, οὐδὲ πλεύσομαι ἐπ' αὐτόν·

οἱ γὰρ νόμοι οὐκ ἐῶσιν ὑποδέχεσθαι τῶν φευγόντων οὐδένα, 'I will not transport any fugitive, and I will not go to get him. The laws do not permit taking on an exile' (**49**).

At first sight, this narrative section seems somewhat superfluous and digressive. However, Apollodorus' hyperactivity as a prosecutor during the following decade may shed more light retrospectively on his decision to include Timomachus and Callippus in his story. In the speech *For Phormion*, written by Demosthenes and dated probably some ten years later, in 350, the unnamed speaker argues that Apollodorus has made many public accusations in the past and has prosecuted Timomachus, Callippus, Menon, Autocles, Timotheus and many others (Dem. 36.53).[34] It is worth noting that, except for Timotheus, the other four officers had participated in the command of the fleet in the North Aegean during Apollodorus' service in 362–360. Apollodorus probably prosecuted them on the grounds of treachery or incompetence during the operations in the North Aegean.[35] Besides, by attacking those persons, Apollodorus exacerbates the popular dissatisfaction with his opponents, some of whom were well-known politicians, in order to prepare the ground for his own involvement in public affairs from very early on. It was a tried and tested practice to initiate one's public career by prosecuting major or minor politicians in court.

An old-style Athenian vs a *civis novus*

In **24–28** the speaker narrates two mediatory attempts to persuade Polycles to take over the ship. In the first the mediators were Euctemon, Apollodorus' former *pentēkontarchos*, who had returned to Athens due to an illness, and Deinias, Apollodorus' father-in-law. Deinias' participation underlines the solidarity of Apollodorus' new family and social status, since it indicates that he became a member of a respected Athenian family.[36] Euctemon and Deinias met Polycles in the sample-market at Peiraeus, asked him to join the ship as soon as possible and recounted the large sums Apollodorus was paying out. Once again, at this point Apollodorus exploits the opportunity to describe in detail his extra expenditure. This would seem a boring repetition, but it is rhetorically effective, since the jurors are again reminded of all the services he offered to his city.

Polycles' refusal to take over the ship is highlighted by several insertions of his own reactions in the narrative. More specifically, in the course of the section Apollodorus is turned into an external narrator, by inserting two secondary internal narrators, Euctemon and Deinias, who report Polycles' reactions in direct speech. This contributes to the vividness of the speech and enhances its performative dynamics and, besides, it revives before the Athenians incidents which took place away from Athens. It supposedly contains Polycles' comments verbatim and reveals his mentality, without any intermediary, in his own words, in particular his envy and prejudice against the speaker as a member of a newly naturalized family. Especially striking is Polycles' response to the prosecutor's repeated requests for him to take over the command of the trireme. More specifically, Euctemon and

Deinias reported Polycles' sneering laugh and spiteful retort, which were revealing of his *ēthos*:[37]

> ἀκούσας δὲ οὗτος ταῦτα τοῦ τ' Εὐκτήμονος καὶ τοῦ Δεινίου τοῦ κηδεστοῦ τοῦ ἐμοῦ, περὶ μὲν ὧν ἔλεγον αὐτῷ οὐδὲν αὐτοῖς ἀποκρίνεται, γελάσαντα δὲ ἔφασαν αὐτὸν εἰπεῖν 'ἄρτι μῦς πίττης γεύεται· ἐβούλετο γὰρ Ἀθηναῖος εἶναι. (26)
>
> When Polycles heard this from Euctemon and from my father-in-law Deinias, he gave no answer to what they had said to him; they reported that he laughed and said, 'The mouse has just got a taste of pitch: he wanted, you see, to be an Athenian'.

This is the sole instance of a proverb in the surviving Attic oratorical corpus.[38] The proverb is used 'on those who lately find themselves falling into difficulties through their own folly'.[39] MacDowell (2009: 131) wonders whether Polycles did indeed use this proverb, or whether Apollodorus invented it in order to entertain his listeners. It is, indeed, possible that the audience recognized in Polycles' words a type of everyday conversation in the market; besides, those who knew Polycles personally might have recognized his sarcastic style and even his tendency to use proverbial expressions. It is revealing that in a comparable instance, discussed above, Apollodorus expects the jurors to imagine Callippus' scornful and threatening answer, which seems to be typical of his style: 'He laughed at me and made the sort of threats you can imagine, since you have some experience of Callippus' manner' (**49**). However, more important than the question of whether the retort is real or invented, is its function within this particular narrative section. Such a vivid narrative might have been supported by a suitable delivery, including, for example, gestures and imitation of voice, which would captivate the attention of the jury and entertain them.[40] Besides, in combination with the reported malicious laugh, it contributes to the depiction of Polycles as a Mr Schadenfreude, a spiteful man, who enjoys the misfortunes of a devoted citizen.[41]

Even more interesting is the fact that the proverb seems to underline the current situation. Like the mouse, Apollodorus is the intruder, the son of a former slave who has risen to the status of a metic and then become a citizen. He has attempted to display his extravagant *philotimia*, but is demonstrated to be less wise than he thought, since he realized the difficulties too late. And the pitch might allude to this very situation, in that this material was used to caulk the holes in triremes and join broken planks (Schol. Ar. *Pl.* 1093).[42] Therefore, the meaning is that it is only now that the newly naturalized citizen realizes the dark aspect (lit. the 'pitch') of his splendid liturgy, i.e., the expenditures required for the maintenance of a warship. Furthermore, this section of the narrative, which contains Polycles' sneer at Apollodorus, reveals the usual attitude of members of traditional elite Athenian families towards newly made citizens. This kind of social mobility through naturalization seems to cause a 'blurring of identities',[43] in the sense that the new legal status of the newly made

citizens did not exactly match their traditional social status. The old-line Athenians believed that naturalized citizens, though legally equal, were naturally inferior to native Athenians, that is, those born of Athenian parents.

Such scornful remarks on newcomers through naturalization were probably not uncommon in fourth-century Athenian society.[44] A comparable case some 30 years later was that of the large-scale importer of processed fish, the metic Chaerephilus (Osborne T 75, *APF* 15187), who was probably awarded citizenship due to his services to Athens during a period of corn shortage (330–327). Chaerephilus' sons, Pamphilus and Pheidippus, also became citizens, were enrolled in the *hippeis* and undertook liturgies. However, it seems that their new legal status did not make them equal to old Athenians, who derisively called them mackerels, 'σκόμβροι', because of their profession. Moreover, they were satirized when they attempted to take part in activities which were traditional emblems of the aristocracy, such as horse riding. Athenaeus (3.119f) reports that when Timocles, obviously the poet of Middle Comedy, saw them on their horses, he said that two mackerels were among the satyrs (σκόμβρους ἐν σατύροις). Timocles' scornful remark, whether it was said within a comedy or outside the context of theatre, derisively alludes to the idea of newcomers in equitation.[45]

Apollodorus was well aware that, in order to be meaningful, his new social status should meet with public recognition by the Athenian people.[46] He also knew that what irritated the old-style Athenians was not his being naturalized *per se*, but the (malicious) interpretation of his true *philotimia* as usurping the emblems of elite society through a display of wealth, which is called *alazoneia.* This prejudice is reflected in the disparaging comments concerning Apollodorus' trierarchies made by Phormion's *synegoros* in a speech written by Demosthenes (Dem. 36.41): 'He has then spent on liturgies the amount you heard – not even a tiny fraction of the income, much less the capital. Yet he'll still boast and talk about trierarchies and chorus-productions'.[47] This is why Apollodorus has to differentiate himself from the selfish and reluctant old-style liturgists and demonstrate that his motive is not *alazoneia*, but his honest love for his city.

This claim is indirectly supported by the concluding part of the narrative (**59–62**), which is emotionally charged. In the belief that the jurors will not accept Polycles' sneering remark, but will sympathize with himself, the speaker presents himself as a devoted citizen, who places high priority on public duty over private businesses, even at the expense of his *oikos.* The narrative culminates in a highly loaded passage, where Apollodorus describes his difficult situation, when he had to choose between his family and the city. The construction of this piteous narrative section is possibly designed to create sentiments similar to those felt by the viewers in the theatre.[48] In particular, what the speaker chooses to emphasize and what to hide are indicative of his aims. He asserts that even when his mother was dying, his wife was ill and his estate in debt, he remained in his position:

> ἡ μέν γε μήτηρ ἔκαμνε καὶ ἐπιθάνατος ἦν ἐμοῦ ἀποδημοῦντος, ὥστε μὴ δύνασθαι [ἂν] ἔτι αὐτὴν βοηθῆσαι τοῖς ἐμοῖς πράγμασιν ἀνηλωμένοις

> ἀλλ' ἠ βραχέα. ἐκταῖος γὰρ ἥκων ἐτύγχανον, καὶ ἐκείνη ἰδοῦσά με καὶ προσειποῦσα τὴν ψυχὴν ἀφῆκεν, οὐκέτι τῶν ὄντων κυρία οὖσα ὥστε δοῦναι ὅσα ἐβούλετό μοι. πολλάκις δὲ πρότερον μετεπέμπετό με, ἀφικέσθαι δεομένη αὐτόν, εἰ μὴ τῇ τριήρει οἷόν τε εἴη … τίνα με οἴεσθε ψυχὴν ἔχειν ἢ πόσα δάκρυα ἀφιέναι, τὰ μὲν ἐκλογιζόμενον περὶ τῶν παρόντων, τὰ δὲ καὶ ποθοῦντα ἰδεῖν παιδία καὶ γυναῖκα καὶ μητέρα, ἣν ἐγὼ οὐ πολλὰς ἐλπίδας εἶχον ζῶσαν καταλήψεσθαι;
>
> (60–2)

> My mother was sick and close to death while I was abroad, so she could help me only a little in my deteriorating financial circumstances. It happened that on the sixth day of my return she saw me, called my name, and died; she was no longer in charge of her property, so she could not give me as much as she wanted. Many times before she had sent for me, asking that I come to her myself if I could not come with my trireme. … How many tears do you imagine I shed as I reckoned up my circumstances and longed to see my children and wife and the mother I had little hope of finding alive?

This story omits some dark aspects and seems to be at variance with other references to Apollodorus' mother, Archippe, who had entered a second marriage with Phormion after Pasion's death, in accordance with the latter's will. Apollodorus disapproved of this marriage and attempted to take Phormion to court, before the dispute was settled through his mother's intervention.[49] Apollodorus avoids mentioning details of this feud, since it would subvert his pitiable scene with his mother on her deathbed. In fact, he confines himself to an allusion to her situation, stressing that she was no longer in charge of her property, and so could not help him in that difficult situation.

On the other hand, he accompanies this section with comments demonstrating his devotion to his city and his self-denial. He claims that he not only spent his money but also risked his life by joining the expedition. At the end of this passage he also explains his choice and adds that nobody could charge him that he left his post or that his trireme was of no use to the city.[50] Indeed, the wording μὴ λιπεῖν τὴν τάξιν ('keep the post') and οὐκ ἄχρηστον τῇ πόλει ('useful to the city', said of his trireme, but possibly referring also to the trierarch),[51] in combination with his self-description as εὔτακτος and χρήσιμος ('orderly and good for the city', **64**), reproduces the ideology of the Athenian elite concerning the obligations of a citizen, and contradistinguishes him from those, like Polycles, who are described as πονηροί and ἀκοσμοῦντες ('evil men and running out of control'). It is also interesting that Apollodorus, a citizen who is usually described as a πολίτης ποιητός ('created citizen') or κατὰ ψήφισμα πολίτης ('made a citizen by a decree of the people') or δημοποίητος (Dem. 45.78, 53.18; Arist. *Pol*. 3.1, 1275a6), being the son of a newly made citizen with foreign and servile origins, appears overeager in serving his city in the most decisive way and adopts the traditional vocabulary in describing these services.[52]

Conclusions

By dressing up his story with a succession of vivid incidents and highpoints and by dotting it with passages in direct speech, Apollodorus presents his case with dramatic *enargeia*. By means of this choice he manages to depict his own political *ēthos* in contradistinction to that of his opponent in a more subtle way than by using a complex argumentation. Apollodorus' narrative both brings to the podium in the present what was said in a remote place in the past, and contributes to the presentation of a private issue through a public perspective. Moreover, it attempts to involve and captivate the audience, who are called on to share experiences not unfamiliar to them and approve the initiatives of the speaker. Notably, from Apollodorus' narrative emerge latent ideological tensions between the members of the liturgical class and a liturgical system already in crisis: the old elite Athenians are no longer willing to undertake expensive liturgies, the enthusiastic newcomers are unable to support their splendid *philotimia* financially and the lower-class rowers are prone to desertion if not paid. Within this framework, the juror of this trial is called upon to form his decision and choose between naturalized citizens like Apollodorus, who adopt the traditional values of the Athenian elite and attempt to seem 'more Athenian than the Athenians',[53] and elite Athenians like Polycles, who were no longer eager to participate in the competitive game of splendid liturgies.

Notes

1 I would like to thank the editors of this volume for improving the argument and the style of my chapter.
2 For Apollodorus' liturgies see Trevett (1992: 10–14).
3 Davies (1971: 465–6).
4 Probably in 359, cf. MacDowell (2009: 130); Trevett (1992: 13 and n. 24).
5 The *antidosis* procedure seems to have often been activated in the course of the fourth century, when many liturgists were reluctant to undertake expensive liturgies; cf. Christ (1990: 147–69); Apostolakis (2007: 93–112).
6 E.g., Cawkwell (1984); Gabrielsen (1994).
7 Cf. Bers (2003: 36 n. 74).
8 On that issue cf. Cawkwell (1984: 337–8). A possible piece of evidence might be **37**, where Apollodorus narrates a meeting of Timomachus with other trierarchs, their successors and other citizens.
9 See Cawkwell (1984: 339–40); Gabrielsen (1994: 78).
10 Cf. Gabrielsen (1994: 78–80).
11 Cf. Gabrielsen (1994: 78–80); Karvounis (2008: 42).
12 This case shares some interesting features with the forensic controversy between Phaenippus and an anonymous citizen, in the frame of an *antidosis* procedure ([Dem.] 42 *Against Phaenippus*), which is dated c. 328 BC. Both Phaenippus and Polycles were members of the elite who attempted to avoid the expenses of a liturgy for their own reasons. Their opponents are the anonymous self-made speaker of [Dem.] 42 and the newcomer Apollodorus. It is worth noting that the reluctance of both Phaenippus and Polycles to undertake the liturgy is described as contempt for both the *demos* and the law ([Dem.] 42.2: καταφρονοῦντες καὶ ὑμῶν καὶ τῶν νόμων; [Dem.] 50.65;

cf. 50.66: μήτε τοὺς διαδόχους καταφρονεῖν τῶν νόμων). For 'liturgy avoidance' in the fourth century cf. Christ (1990); Apostolakis (2007).

13 For example, Lortzing (1863: 30); Blass (1893: 539).
14 Trevett (1992: 84–5).
15 Cf., for example, the speech *Against Nicostratus* ([Dem.] 53), which contains a well-balanced narrative (§§ 5–18), in compliance with the suggestions of the handbooks; see Kapparis (2017: 290). Cf. Fisher in this volume.
16 Cf. Spatharas (2009).
17 Cf. Kapparis (2017: 302).
18 It has often been observed that Apollodorus was notably fond of *oratio recta*; cf. Lortzing (1863: 41–2); Trevett (1992: 89). For the appropriate use of direct speech cf. Arist. *Rhet*. 3.16.5, 1417a3–5: παραδιηγεῖσθαι δὲ ὅσα εἰς τὴν σὴν ἀρετὴν φέρει … ἢ θατέρου κακίαν, 'seize the opportunity in the narration to mention whatever bears on your own virtue … or bears on the opponent's wickedness'.
19 Cf. Kapparis (2017: 296–7).
20 Cf. Christ (1990) and note 12.
21 For reciprocity between the city and citizens cf. Davies 1971, xvii–xviii. On the *charis*, see Fisher 2010, esp. pp. 101–2. On *philotimia* and *charis* cf. D. 20.69,82, with Kremmydas 2012; Canevaro 2016, 78–9, 83–7, 327–9, 425–6.
22 Cf. Trevett 1992, 172–3.
23 On the interconnections between *philotimia* and *philonikia* see Wilson 2000, 187–94.
24 For a similar loose construction cf. 50.22 (commented on below).
25 Cf. Ballin (1978: 149).
26 On the limits of *philotimia* cf. Christ (2006: 171–89).
27 A comparison with a passage from a speech probably written by Demosthenes some ten years later in defence of Apollodorus, the speech *Against Stephanus*, is revealing: 45.78: τὰ δ' εἰς τὴν πόλιν καὶ ὅσ' εἰς ὑμᾶς, ὡς δύναμαι λαμπρότατα, ὡς ὑμεῖς σύνιστε, ποιῶ·οὐ γὰρ ἀγνοῶ τοῦθ' ὅτι τοῖς μὲν γένει πολίταις ὑμῖν ἱκανόν ἐστι λῃτουργεῖν ὡς οἱ νόμοι προστάττουσι, τοὺς δὲ ποιητοὺς ἡμᾶς ὡς ἀποδιδόντας χάριν, οὕτω προσήκει φαίνεσθαι λῃτουργοῦντας. μὴ οὖν μοι ταῦτ' ὀνείδιζε, ἐφ' οἷς ἐπαίνου τύχοιμ' ἂν δικαίως. 'Whatever concerns the state, however, and all that concerns you, I perform, as you know, as lavishly as I can; for I am well aware that for you who are citizens by birth it is sufficient to perform public services as the laws require; we on the contrary who are created citizens ought to show that we perform them as a grateful payment of a debt. Cease, then, to fling into my teeth matters for which I should properly win commendation'.
28 For envy in Attic orators, see Sanders (2014: 79–99).
29 Polycles' criticism, however, might have been based on common preoccupations concerning the use of *balaneion.* For a contradistinction of *balaneion* as a place of corruption with *palaistra* as exercising manliness, cf. Ar. *Nu.* 1053–4: ἃ τῶν νεανίσκων ἀεὶ δι' ἡμέρας λαλούντων / πλῆρες τὸ βαλανεῖον ποιεῖ κενὰς δὲ τὰς παλαίστρας, 'That's why our young men are always babbling on about these days/ crowding in the bath house, leaving empty all the wrestling schools'. For the disreputable connotations of bathhouses cf. Ar. *Eq.* 1400–01: μεθύων τε ταῖς πόρναισι λοιδορήσεται, / κἀκ τῶν βαλανείων πίεται τὸ λούτριον, 'when he is drunk he will exchange foul language with the prostitutes, / and he will drink used water from the public baths'.
30 Cf. Lortzing (1863: 41–2); Bers (1997: 197).
31 Cf. Roisman (2005:126).
32 For this kind of construction in Apollodorus cf. Trevett (1992: 106–8).
33 **23**: ἔτι δὲ συνέβη τῆς νυκτὸς ὥρᾳ ἔτους ὕδωρ καὶ βροντὰς καὶ ἄνεμον μέγαν γενέσθαι (ὑπ' αὐτὰς γὰρ Πλειάδων δύσεις οἱ χρόνοι οὗτοι ἦσαν), ἐξ ὧν τίνα οὐκ οἴεσθε, ὦ ἄνδρες δικασταί, τοῖς στρατιώταις ἀθυμίαν ἐμπεσεῖν; πόσην δέ μοι μετὰ ταῦτα

ἀπόλειψιν γενέσθαι πάλιν … 'Besides that, during the night at that time of the year – exactly the setting of the Pleiades – we had rain, thunder, and strong wind; can you imagine, gentlemen of the jury, how the soldiers lost heart and how many men again deserted me afterwards?'

34 Cf. Harris (2013: 90–1).
35 Cf. MacDowell (2009: 133); Trevett (1992: 131–8).
36 Cf. Deene (2011: 171).
37 Polycles' character is also depicted in **30–1**, where Apollodorus, in the presence of many witnesses, approached him with a detailed bill and said that 'he was ready to lay on a pledge for him', obviously to take an oath that the bill is accurate and honest. Polycles replied 'I couldn't care less': προκαλουμένου δέ μου ταῦτα, ἀπεκρίνατό μοι ὅτι οὐδὲν αὐτῷ μέλοι ὧν λέγοιμι; for the context of an oath cf. Sommerstein (2013: 106–7). For the use of humour in forensic oratory cf. Dem. 55.18.
38 Bers (1997: 144).
39 Cf. Diogenianus, *Paroimiae* 2.65: ἄρτι μῦς πίσσης γεύεται: ἐπὶ τῶν νεωστὶ πεῖραν τῶν κακῶν λαμβανόντων. Τὸ γὰρ ζῶον εἰς πίσσαν πίπτον δεινὰ πάσχει; cf. Theocr. 14.51: νῦν δὲ πόθεν; μῦς, φαντί, Θυώνιχε, γεύμεθα πίσσας; Herod. 2.62: πέπονθα πρὸς Θάλητος ὅσσα κὴμ πίσσηι μῦς; Aristotle (*Rhet.* 2.21.12, 1395a19–20) notes that some proverbs are also maxims.
40 Cf. Kapparis (2017: 286).
41 For ἐπιχαιρεκακία, 'the malicious pleasure excited by another's ill fortune' (ἐπιχαιρεκακία δὲ ἡδονὴ ἐπ' ἀλλοτρίοις κακοῖς, D.L. 7.114) as a moral vice cf. Arist. *Eth. Nic.* 2.7, 1108b3–6.
42 Schol. Ar. *Pl.* 1093: πιττῶ δὲ κυρίως ἐστὶ τὸ τὰς νῆας πίσσῃ χρίω, καὶ τὸ τὰ διερρωγότα τῶν ξύλων ἑνοῦν; cf. Blanshard (2010: 203–24).
43 For this termination cf. Deene (2011: 161); Vlassopoulos (2007: 34–5).
44 It is noteworthy that social status or family line were commonly the target of slander, even in cases where one's status could not be disputed, for example, Dem.18.258–60; Aeschin. 3.180.
45 Athenaeus 3.119f (= fr. 15 K.- A.): τοσαύτην δ' Ἀθηναῖοι σπουδὴν ἐποιοῦντο περὶ τὸ τάριχος ὡς καὶ πολίτας ἀναγράψαι τοὺς Χαιρεφίλου τοῦ ταριχοπώλου υἱούς, ὥς φησιν Ἄλεξις ἐν Ἐπιδαύρῳ οὕτως: τοὺς Χαιρεφίλου δ' υἱεῖς Ἀθηναίους, ὅτι εἰσήγαγεν τάριχος, οὓς καὶ Τιμοκλῆς ἰδὼν ἐπὶ τῶν ἵππων δύο σκόμβρους ἔφη ἐν τοῖς Σατύροις εἶναι. 'The Athenians were so fond of pickled fish that they enrolled as citizens the sons of Chaerephilus the seller of salt-fish; as Alexis tells us, in his *Epidaurus*, when he says — For 'twas salt-fish that made Athenians and citizens of Chaerephilus's sons. And when Timocles once saw them on horseback, he said that two tunny-fish were among the Satyrs.
46 Cf. Deene (2011: 161).
47 Dem. 36.41: καὶ τοσαῦτ' ἀνηλωκὼς ὅσ' ὑμεῖς ἠκούσατε, οὐδὲ πολλοστὸν μέρος τῶν προσόδων, μὴ ὅτι τῶν ἀρχαίων, εἰς τὰς λῃτουργίας, ὅμως ἀλαζονεύσεται καὶ τριηραρχίας ἐρεῖ καὶ χορηγίας; cf. Aeschines' attack on Demosthenes, accusing him of undertaking a choregia due to his hedonistic pleasures (3.240): σὺ δὲ πλουτεῖς καὶ ταῖς ἡδοναῖς ταῖς σαυτοῦ χορηγεῖς.
48 Cf. Kapparis (2017: 286), 'This narrative contains everything which a good play would contain: love, separation, a family death, personal drama, social anxieties, moral issues, betrayal and danger'.
49 Dem. 45.3–4; see Trevett (1992: 10–11).
50 **63**: ὥστε μήτε τὴν τάξιν αἰτιᾶσθαί μέ τινα λιπεῖν μήτε τὴν τριήρη τῇ πόλει ἄχρηστον γενέσθαι.
51 Cf. Isae. 4.7, 7.37, 41.

52 From this point of view, this eagerness is comparable to his decision to prosecute Neaera, an alleged *hetaira*, for pretending to be married to an Athenian citizen and thus subverting the purity of the citizen body ([Dem. 59]).
53 Trevett (1992: 178).

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Chapter 9

Reconstructing the past

Forensic storytelling about the Athenian constitution in Lysias 12 and 13

Eleni Volonaki

Introduction

Lysias' *Against Eratosthenes* (12) was presumably delivered a few months after the restoration of the democracy in 403 BC, at the *euthyna* of Eratosthenes, one of the Thirty who had remained in the city of Athens and was willing to give his accounts in order to obtain protection from the Amnesty agreement (*Ath. Pol.* 39.6). Lysias accuses the defendant of being guilty of the murder of his brother, Polemarchus. Almost five years later, Lysias composed the speech *Against Agoratus* (13), which was delivered by a kinsman of Dionysodorus, a victim of the Thirty in a case of *apagōgē phonou*.

Despite the different procedural frame, the two public orations follow analogous patterns with respect to their forms of argumentation, structure and rhetorical features. They both concern homicide referring back to the regime of the Thirty, where the main concept is the idea of intentionality focused on the defendant's degree of responsibility.

It is clear that various forms of argumentation overlap. The narratives focus on the oligarchic plots to eliminate innocent democrats on the basis of untrue charges (12.6/13.21). Although both Eratosthenes and Agoratus are presented as acting for personal profit, the difference in emphasis lies in the fact that Eratosthenes was a man of power, whereas Agoratus was used as a tool of those who were powerful. This chapter will compare the rhetorical modes in reconstructing the past, in particular the aftermath of the Peloponnesian War, the changes in the Athenian constitution, the political rivalries and the reality of the Amnesty agreement, as presented in these two speeches by Lysias at two trials, which were heard at roughly the same time. It will explore the differentiation in the emphasis placed in each speech on the same part of Athenian history and will further examine the reflection of these two forensic narratives on the collective citizen identity towards the end of the fifth century.

Time and space in narrative: the political setting of Lysias 12 and 13

Narrative may, in line with the theoretical discussion of Aristotle in the *Rhetoric*, be a single, extended passage within the speech, but even from the speeches of the earliest orators it appears that in practice a narrative might well be divided into two or more sections, which deal with different temporal stages or thematic aspects of the story.[1] When the orators use a discrete narrative, it is typically introduced by a formulaic transition sentence such as 'I wish to recount these matters from the beginning', and then begins with the particle *gar*.[2] The narrative story is normally presented in such a way as to prove or disprove the accusation for the alleged offence. In this sense, the narrative serves as a vehicle of persuasion, in particular in a forensic speech, which according to Aristotle is oriented towards the past. It not only tells the story, but establishes and proves the arguments that surround the legal case and the story as a whole:

> There is a temporality particular to each type of rhetoric: to deliberative oratory the future, since it gives advice, pro or con, concerning what will happen; to forensic oratory the past, since both prosecution and defence always speak about events that have happened; and to epideictic oratory the present, since all speakers praise or blame according to existing conditions, though they often also recall the past and anticipate the future.
>
> (Aristotle, *Rhetoric* 1.3.4)

This chapter will explore the composition of narratives in two forensic speeches, composed by Lysias for two public cases, the trial against the tyrant of the Thirty, Eratosthenes, and the trial against Agoratus, a man of servile origin, who made denunciations against the Athenian demos. Both cases involve the history of the last decade of fifth-century Athens, in particular, the events before and after the rise of the Thirty, the civil war, and the restoration of the democracy with the Amnesty agreement. Lysias' two speeches appeal to civic and legal memory and for punishment, and in this sense these trials constitute a breach of the spirit of the Amnesty. My interest lies in a comparison between the two forensic narratives in the presentation of the story, their structure and composition, the rhetorical techniques of unfolding the facts and the means of persuasion for a specific reconstruction of the past that suits the argumentation of each case.

Time and space, as part of the narrative's structure affecting our basic understanding of the text, are central to our interpretation and comparative analysis of the narrative strategies and techniques. Temporal relationships within the representation of the past relate to the order, repetition and duration of the events, and the variations in duration; temporal patterns are employed to create suspense, story-time curiosity and surprise. On the topographical level, objects, locations and people in a narrative world reconstruct the past and the plausibility of the story lies in such details. Thus, in our narratives concerning the crimes of the

Thirty and those who were allegedly supporting them, time and space are crucial to the reconstruction of the scene of the murders, as well as the motivation and guilt of the accused.

Wohl (2010: 201–42) discusses thoroughly the juridical discourse in Lysias' speeches 12 and 13, and analyzes the logographer's strategies of applying the 'remember and forget' argumentation in the Athenian law courts after the Amnesty agreement of 403 BC. Wohl explains that both speeches return to the traumatic history of the civil war and deal with the temporal and legal continuity. In the case of Lysias 13, *Against Agoratus*, it is the law's own continuity that needs repair, its fundamental connection is between past crime, present trial and future punishment, while the speaker seeks to close the temporal gap between past crime and present prosecution.[3] On the other hand, in the case of Lysias 12, *Against Eratosthenes*, there is no gap since the Amnesty and the past press too close; thus, the speaker creates a critical space between past and present to allow future justice.[4]

The historical continuity of the Athenian fifth-century democratic polis was based upon the unity of the law, but the ideal temporal chain was suddenly broken for both Athenian politics and jurisprudence by the crisis at the end of the Peloponnesian War. The Thirty oligarchs took control of Athens in the spring of 404 BC and for eight months they governed by violence, seizing property and exiling or executing citizens without trial. In consequence, a civil war broke out between the so-called 'men of the city', who were supporting the oligarchs, and the 'men of the Peiraeus', who were supporting the demos. The democracy was restored in the autumn of 403/2 BC and was formalized in the reconciliation agreement that ended the civil war.[5]

All Athenian citizens swore the Amnesty oath and its term of *mē mnēsikakein*, literally 'not remember the evils', against any of the citizens, except the Thirty and the Eleven, and not even against any of these if they were willing to give an account (*euthyna*) of their magistracy and were found not guilty.[6] This Amnesty was intended to repair democratic unity in the present and continuity with the past.[7] However, the Amnesty agreement was a ban specifically on legal memory; it was most probably designed to prevent citizens from bringing legal prosecutions for crimes committed during the period of the Thirty. This assumption is strengthened by the institution of the *paragraphē* – a legal procedure available to defendants to prevent a case from being brought on the grounds that it contravened the Amnesty.[8] Attempts to evade the spirit of the Amnesty or to break the Amnesty oath in either form or substance can be discerned in forensic speeches delivered in court towards the end of the fifth century and during the first half of the fourth century. It is striking that allegations about the misfortunes that befell the city of Athens during the regime of the Thirty constitute a common rhetorical topos that is used in forensic oratory throughout the fourth century to associate the litigants' behaviour with the Thirty's criminality and *ponēria* and to arouse the judges' hostile emotions from revenge. Wolpert (2002) has shown that the court cases of the early fourth century allowed the Athenians to work

through these events, constructing an official history of the period and deploying a rhetoric of mutual understanding to resolve past differences in the interest of future agreement. In other words, legal memory helped the Athenians to forget the traumatic experience of the political conflict and to restore democratic unity for the future. Wohl suggests that 'the civil war and amnesty posed a crisis for the temporality of the law' and her approach is not so much on legal memory but on civic forgetting.[9] In accepting all these approaches to the reconstruction of the past, my focus lies in the representation of the events in accordance with the aims of each prosecutor in order to win his case as to evade the Amnesty law, break the reconciliation agreement and exact punishment as revenge. In this context, the truth from the past derives from the evil crimes committed by the Thirty and all their supporters.

Lysias 12, *Against Eratosthenes*

The case in Lysias 12, *Against Eratosthenes*, is extraordinary since it is the only case we have in which Lysias acts as a prosecutor in his own voice. There is a dispute whether Lysias spoke at all, since he was not an Athenian citizen but a metic, and as a metic he would normally have been excluded from speaking in the Athenian courts. Some scholars, therefore, regard this speech as a pamphlet that was circulated but was never actually delivered in court.[10] Others believe that Lysias did deliver the speech in court, during the short period after Thrasybulus had introduced a decree in 403/2, granting metics citizenship, until this decree was revoked by Archinus seven months later.[11] It is possible that Lysias had this brief opportunity to prosecute Eratosthenes, one of the Thirty, and recall in public all his misfortunes, in particular the violent murder of his brother Polemarchus.

As has already been stated, the Thirty were excluded from the Amnesty oaths, unless they were willing to submit to formal *euthyna* – that is, account for their actions (And. 1.90). And if they were acquitted of criminal conduct, they were allowed to stay in the city of Athens (*Ath. Pol.* 39.6). The legal procedure of *euthyna* as used to get the Thirty to trial actually admits the possibility of remembering and possibly forgiving even those presumed to be most guilty.[12] On the other hand, this clause of the Amnesty agreement seeks to impose justice on those most responsible for the crimes of the oligarchy.

Euthyna was a process of submitting accusations before the *euthynoi* against politicians concerning their misconduct; in the mid-fourth century a *euthyna* might, in effect, lead to another kind of a legal prosecution and trial.[13] However, here it is more likely that we are dealing with a trial within the legal scope of the *euthyna* procedure, as held under the specific circumstances of checking upon the tyrants, and the charge is homicide of a metic (Polemarchus, Lysias' brother). According to the Amnesty agreement, a *dikē phonou* could be initiated against alleged murderers only if they had committed homicide with their own

hands (*autocheiriai*; cf. *Ath. Pol.* 40.2). Eratosthenes, however, did not commit the murder with his own hands but is simply charged with the responsibility for Polemarchus' murder. Thus, it seems plausible that Eratosthenes' trial was not a homicide trial but was heard openly at a heliastic court as a result of the *euthyna* process.

Lysias' own sufferings during the oligarchy of the Thirty appear inseparable from the sufferings of the city; speech 12 as a whole constitutes a public declaration of the crimes of the Thirty, and deliberately brings the past moments into the present, even though the temporal gap is not long. The Athenians are called to experience again, moment by moment and step by step, the hostility of Eratosthenes and the Thirty against the speaker's family.

The narrative in Lysias 12 is a model of clear simplicity, but contains many personal reflections (e.g., in 7, 26, 31) and is designed to arouse sympathy and indignation; it has two main objectives: the specific and practical one of establishing Eratosthenes' personal responsibility for the death of Lysias' brother Polemarchus, and the general one of representing the Thirty as motivated purely by greed.[14] There is, firstly, the main narrative concerning the murder of Polemarchus, and there are two more separate narrative sections in the speech aimed at substantiating Eratosthenes' wicked conduct and his own responsibility for all the crimes of the Thirty. All the three narrative sections are more or less of equal length, consisting roughly of 20 to 25 sections each, and they comprise three-quarters of the speech used to tell the story and substantiate the prosecution's argumentation.

The main story begins with a preliminary narrative, a so-called *prodiēgēsis* according to Aristotle (*Rhet.* 3.13.5) describing the status of Lysias' family in Athens prior to the events that led to Polemarchus' murder (4–5). The friendship between Lysias' father Cephalus and Pericles[15] is stressed from the very beginning to underline the democratic background of the prosecutor's family, referring back to the popular politician who had advanced the democratic constitution. The reconstruction of the past goes back to the golden era of Periclean Athens, when democracy had been fully established and developed. The Athenians are called on to feel proud of their city at the time and connect the victim's family with its thriving period. It is stressed that Cephalus had lived in the city of Athens for 30 years without any involvement in litigation with anyone and the family's conduct during the democracy was of such a kind that they did not offend others nor did they suffer injustice at their hands.

Time is telescoped from the glorious period of the democratic constitution to the very recent past; Lysias moves directly to the period when the Thirty had come to power and it was then that their life changed completely. This dramatic shift from distant to recent past aims to underline the unexpected violation imposed upon Lysias' family; they were mostly appreciated as friends of Pericles himself whereas later the Thirty treated them with contempt as enemies. In this context, the Thirty are characterized as men of a wicked and slanderous character (πονηροὶ μὲν καὶ

συκοφάνται), as was reflected in their deceitful behaviour towards the demos: 'they pretended that it was necessary to purge the city of wrongdoers and to direct the rest towards virtue and justice, but they had the audacity not to follow these words with the appropriate actions' (5).[16] The contrast between words and deeds, pretexts and true motives is the place where the judges are asked to explore the historical background and give their own critical approach. The fact that the Thirty are presented as having made appeals for justice and virtue whereas in practice they enforced injustice and malice makes them very dangerous enemies of the city.

The formal charge against Eratosthenes is narrated and covered in 12.6–36. No evidence is called, and two methods are used to stress the guilt of the accused. The first is the careful construction of a narrative which assumes without stating it that the Thirty were corporately and individually corrupt. The second is the cross-questioning of Eratosthenes himself (25), as a result of which Eratosthenes appears to be basing his defence on a plea that he was taking orders from superiors, which Lysias forcefully criticizes. Nearly two-thirds of the speech, however, are devoted to material that is prejudicial rather than formally relevant (37–100), broadening into an attack on the rest of the Thirty and their associates (53–61). This leads into a specific and extended attack on the controversial figure of Theramenes (62–78), the leader of one of the factions among the Thirty, who had been executed by his more extreme rival Critias (Xen. *Hellenica* 2.3).[17] The attack on Theramenes also contains elements of narrative which aim to show that Eratosthenes cannot be associated with him in any way, to justify his actions.

The first narrative section (6–24) describes the events which brought Lysias' personal damage and his brother's death. Lysias openly reminds the Athenians of their own sufferings during the regime of the Thirty (5: καὶ περὶ τῶν ὑμετέρων ἀναμνῆσαι πειράσομαι); it is necessary for the hearing of the case and it appears legal to recall the past without violating the Amnesty agreement.

The whole story starts with a conspiracy initiated by Theognis and Peison, who used the excuse to punish some citizens allegedly disaffected with the regime of the Thirty, while in reality they only wished to make money:

> Θέογνις γὰρ καὶ Πείσων ἔλεγον ἐν τοῖς τριάκοντα *περὶ τῶν μετοίκων*, ὡς εἶέν τινες τῇ πολιτείᾳ ἀχθόμενοι: *καλλίστην* οὖν εἶναι *πρόφασιν* τιμωρεῖσθαι μὲν δοκεῖν, *τῷ* δ᾽ *ἔργῳ* χρηματίζεσθαι: πάντως δὲ τὴν μὲν πόλιν πένεσθαι τὴν δ᾽ ἀρχὴν δεῖσθαι χρημάτων.
>
> (12.6)

> Theognis and Peison spoke in a meeting of the Thirty about the resident aliens, saying that some were disaffected with their regime. This would afford an excellent excuse to appear to be punishing them, while in reality to be making money. At any rate, the city was impoverished, and the government needed money. They had no difficulty in persuading their audience, who thought nothing of putting men to death but a lot of acquiring money.

The phrase περὶ τῶν μετοίκων draws the distinction from the citizen body to the intentional maltreatment of the metics by the Thirty as a kind of policy. Metics were known for their wealth and business and even though killings were actually committed against citizens as well, the emphasis here is meant to persuade the judges of the specific motivation and thus the plan to kill Lysias' brother and seize the family's property. The antithesis **καλλίστην** οὖν εἶναι **πρόφασιν** τιμωρεῖσθαι μὲν δοκεῖν, τῷ δ᾽ ἔργῳ χρηματίζεσθαι confirms the previous characterization of the Thirty as deceivers of the Athenian people on the grounds that their deeds were contrary to their words. The plan was to arrest ten metics, two of them poor, so that they could plead in the case of the others that this had not been done for money but was for the benefit of the constitution (7). Thus, the narrative is constructed upon the *ēthos* of the Thirty as greedy and self-seeking men, and as such they would not hesitate to commit any crime for their own benefit, especially murders. This is further underlined by the sarcastic comment on their attitude, 'as if they had had valid reasons for any of their other actions!' (7).

The events are vividly unfolding with the interchange of present and past tenses and the insertions of direct speech, especially when describing the conspiratorial tone of discussions between supporters of the oligarchy, such as Peison, Melobius and Mnesitheides, and Damnippus and Theognis. Emphatic repetitions of the Thirty's motivation of getting as much money as possible in exchange for the victims' lives are central to the narration of the story to such an extent that the narrative echoes an extended period of continuous bargaining and negotiating for safety between the Thirty and their associates on the one hand and Lysias, as the victim, on the other (Lys. 12.7–15):

> καὶ τοὺς ἀκούοντας οὐ χαλεπῶς ἔπειθον: ἀποκτιννύναι μὲν γὰρ ἀνθρώπους περὶ οὐδενὸς ἡγοῦντο, **λαμβάνειν δὲ χρήματα περὶ πολλοῦ ἐποιοῦντο**.
>
> (12.7)

> They had no difficulty in persuading their audience, who thought nothing of putting men to death but a lot of acquiring money.

> ἐγὼ δὲ Πείσωνα μὲν ἠρώτων εἰ βούλοιτό με σῶσαι χρήματα λαβών. ὁ δ᾽ ἔφασκεν, **εἰ πολλὰ εἴη**. [9] εἶπον ὅτι τάλαντον ἀργυρίου ἕτοιμος εἴην δοῦναι: **ὁ δ᾽ ὡμολόγησε ταῦτα ποιήσειν**.
>
> (12.8)

> I asked Peison whether he was prepared to accept money in return for my safety. He said he would, if it was a large sum. So I said I was prepared to give him a talent of silver, and he agreed to my proposal.

> ἐπειδὴ δὲ **ὤμοσεν**, ἐξώλειαν ἑαυτῷ καὶ τοῖς παισὶν ἐπαρώμενος, **λαβὼν τὸ τάλαντόν με σώσειν**.
>
> (12.10)

When he had taken the oath to take the talent and save me, calling down destruction upon himself and his children.

ἐπεὶ δὲ οὐχ ὅσον ὡμολόγητο εἶχεν, ὦ ἄνδρες δικασταί, ἀλλὰ τρία τάλαντα ἀργυρίου καὶ τετρακοσίους κυζικηνοὺς καὶ ἑκατὸν δαρεικοὺς καὶ φιάλας ἀργυρᾶς τέτταρας.

(12.11)

As he now had not the amount which I had agreed, gentlemen of the jury, but three talents of silver, four hundred cyzicenes, a hundred darics and four silver cups.

ὁ δ᾽ ἀγαπήσειν με ἔφασκεν, εἰ τὸ σῶμα σώσω.

(12.11)

But he said I should be content if I saved my skin.

καλέσας δὲ Δάμνιππον λέγω πρὸς αὐτὸν τάδε, ‘ἐπιτήδειος μέν μοι τυγχάνεις ὤν, ἥκω δ᾽ εἰς τὴν σὴν οἰκίαν, ἀδικῶ δ᾽ οὐδέν, χρημάτων δ᾽ ἕνεκα ἀπόλλυμαι.

(12.14)

I called Damnippus and said to him: “You are a friend of mine and I have come into your house. I have done no wrong but am being destroyed for my money”.

εἴ τις ἀργύριον διδοίη. ἐκείνου δὲ διαλεγομένου Θεόγνιδι (ἔμπειρος γὰρ ὢν ἐτύγχανον τῆς οἰκίας, καὶ ᾔδη ὅτι ἀμφίθυρος εἴη) ἐδόκει μοι ταύτῃ πειρᾶσθαι σωθῆναι, ἐνθυμουμένῳ ὅτι, ἐὰν μὲν λάθω, σωθήσομαι, ἐὰν δὲ ληφθῶ, ἡγούμην μέν, εἰ Θέογνις εἴη πεπεισμένος ὑπὸ τοῦ Δαμνίππου **χρήματα λαβεῖν, οὐδὲν ἧττον ἀφεθήσεσθαι**, εἰ δὲ μή.

(12.14–15)

if anyone offered him money. While he was talking with Theognis, (I happened to be familiar with the house and knew that it had doors at both front and back) I decided to make my bid for safety this way, reflecting that if I were undiscovered, I should be saved, while if I were caught I thought that if Theognis had been persuaded by Damnippus to accept money, I should be released none the less, and if not I should die just the same.

The detailed account of the night of Lysias' arrest includes reported conversations and reconstructed thoughts and motives from both sides.[18] Following his arrest at night, Lysias initially made a deal to give a talent to Peison in order to save his life but, when he was later caught in his room, was then compelled to give three talents of silver, four hundred cyzicenes, a hundred darics and four silver cups (11). It is to be noted that no evidence is provided for the alleged seizure of Lysias' property, nevertheless the detailed account of the specific number of goods adds

plausibility to the whole scene. Moreover, the description of the place, Lysias' room, is meant to underline the attack against the victim's privacy. When he was taken to Damnippus' house, after following Melobius and Mnesitheides against his will (12–13), Lysias attempted to bribe Damnippus himself in order to save his life (14); the direct speech interchanged between Lysias and Damnippus makes the bargain more vivid and persuasive. Furthermore, space is used in such a thorough and detailed manner that Lysias' escape, though not proven, makes the story more believable and distracts from the fact that Lysias was not actually harmed by the Thirty and their associates. As becomes obvious, Lysias as a close friend of Damnippus was so familiar with the house as to know that it had two doors leading into the street.[19] It is striking that all three doors happened to be open at the time while the oligarchs were guarding the courtyard door. The scene of escape is constructed upon a climax of suspense and a dramatic atmosphere, which is emphasized by the careful and deliberate use of space as a fundamental part of the narrative. As to the time, conspiracy and intrigue against innocent people, wealthy metics and enemies of the Thirty occur during the night; there is quick and silent movement and guards are all over the places in the city – probably located at houses well known to the Athenian judges; and the darkness of late evening is identified with illegality and death. The persons involved in the scene of Lysias' escape, Peison, Theognis, Melobius and Mnesitheides, are all members of the Thirty (Xen. *Hell.* 2.3.2), also well known by the Athenians, whereas Damnippus, though apparently trusted by them, was not one of their number.

Lysias portrays the group of the Thirty and their supporters as ruthless murderers. On the other hand, Lysias himself appears desperate for his life, making negotiations in the face of death and ending up losing most of his property. The speaker reaches the dramatic peak with Lysias' arrival at Archeneos' house, where he heard that his brother had been executed (16). The news is that Eratosthenes had arrested his brother, Polemarchus, in the street and taken him off to prison, and that the Thirty gave Polemarchus their customary command to drink hemlock, with no prior statement as to the reason for his execution, not even a trial and a chance to defend himself (17). Eratosthenes is mentioned for the first time, together with the most negative piece of evidence against him. The element of dramatization is rhetorically used as revealing the truth of the story, appealing for the judges' hatred of and anger against Eratosthenes. The details following Polemarchus' death reflect even more clearly the cruelty and impiety of the Thirty, since they showed no respect to the dead man, his burial and the relevant divine laws. Since the main charge against Eratosthenes is homicide, the religious dimension is very important to the case and therefore Lysias presents the Thirty as breaking all the rules to the point of brutality:

> καὶ ἐπειδὴ ἀπεφέρετο ἐκ τοῦ δεσμωτηρίου τεθνεώς, τριῶν ἡμῖν οἰκιῶν οὐσῶν ἐξ οὐδεμιᾶς εἴασαν ἐξενεχθῆναι, ἀλλὰ κλεισίον μισθωσάμενοι προὔθεντο αὐτόν. καὶ πολλῶν ὄντων ἱματίων αἰτοῦσιν οὐδὲν ἔδοσαν εἰς τὴν ταφήν, ἀλλὰ τῶν φίλων ὁ μὲν ἱμάτιον, ὁ δὲ προσκεφάλαιον, ὁ δὲ ὅ τι ἕκαστος ἔτυχεν

> ἔδωκεν εἰς τὴν ἐκείνου ταφήν. καὶ ἔχοντες μὲν ἑπτακοσίας ἀσπίδας τῶν ἡμετέρων, ἔχοντες δὲ ἀργύριον καὶ χρυσίον τοσοῦτον, χαλκὸν δὲ καὶ κόσμον καὶ ἔπιπλα καὶ ἱμάτια γυναικεῖα ὅσα οὐδεπώποτε ᾤοντο κτήσεσθαι, καὶ ἀνδράποδα εἴκοσι καὶ ἑκατόν, ὧν τὰ μὲν βέλτιστα ἔλαβον, τὰ δὲ λοιπὰ εἰς τὸ δημόσιον ἀπέδοσαν, εἰς τοσαύτην ἀπληστίαν καὶ αἰσχροκέρδειαν ἀφίκοντο καὶ τοῦ τρόπου τοῦ αὐτῶν ἀπόδειξιν ἐποιήσαντο: τῆς γὰρ Πολεμάρχου γυναικὸς χρυσοῦς ἑλικτῆρας, οὓς ἔχουσα ἐτύγχανεν.
>
> (12.18–19)

> And as he was being carried dead from the prison they did not allow a funeral to be conducted from any one of our three houses, but they laid him out in a small hut they had hired. We also had many cloaks, yet they refused their request for one for his burial; but one of our friends supplied a cloak, another a pillow, and others what they each happened to have, for the burial. They had seven hundred shields of ours, they had all that silver and gold, with bronze, jewellery, furniture and women's clothes, all in quantities exceeding their greatest expectations, and a hundred and twenty slaves, the best of which they took for themselves and the rest they handed over to the public treasury. But the action which illustrates their character and the extremes of insatiable greed that they reached was this: on first entering the house, Melobius tore from her ears the gold earrings which Polemarchus's wife happened to be wearing.

The scene offers a good example of the emotive potentialities of *enargeia*. The humiliating burial for the rich dead man, whose property was seized by the Thirty, and the violent removal of the golden earrings from the dead man's wife aim to maximize the brutality of the Thirty and arouse the contempt and hostility of the judges. On the other hand, as Edwards and Usher (1985: 239) point out: 'the Thirty's desire to avoid a public spectacle of grief is understandable, because it would attract sympathetic crowds and perhaps lead to serious disorder'.

The injustice enforced by the Thirty is further underlined by Lysias' reference to the services his family had offered to the city, such as acting as theatre-producers, paying many special taxes and in general behaving as responsible and obedient men, while having no enemies and ransoming many Athenians from the enemy (20). In a dramatic form, the speaker narrates the misfortunes that befell the city because of the Thirty, and these involve crucial civic matters of family and social status; in particular many citizens were driven into the enemy camp, many were unjustly killed and then left unburied, many were deprived of their civic rights and the daughters of many citizens were prevented from being married (21).

The past moment lives in the present since the judges were also witnesses and victims. Not only does Lysias remind the Athenians of their sufferings but he also makes each group of citizens re-experience a different misfortune by the Thirty. Thus, Lysias arouses the audience's anger and frustration, saying that it was outrageous for the tyrants to come to court and pretend that they have done

nothing 'wicked' or 'shameful'. In contrast, Lysias tells the truth and this is that Eratosthenes killed his brother Polemarchus pursuing his own lawless aims (23). Eratosthenes' audacity is nothing but a continuation of his past crimes, and subsequently the judges, still victims, are called to dispense justice; thus their verdict will have an effect on the future and on the past.

In the narration of Lysias' story, Eratosthenes' name is mentioned only twice, once to indicate that he was the one who arrested Polemarchus and took him to prison, implying that he was responsible for his death but without giving any proof of this, and the second time at the end of the story, when Lysias explicitly uses the verb ἀπέκτεινεν to accuse him of his brother's murder. As has been shown, the dramatic elements and the conversations held during the negotiations between Lysias and the members of the Thirty enhance the persuasiveness of the story rather than offering actual evidence. Moreover, the presentation of *ēthos* involves the Thirty collectively rather than Eratosthenes alone, which is purposely done in order to identify him as a tyrant and as responsible for the deeds; consequently, he should have been expelled and not been given an opportunity to defend himself.

The cross-examination of the defendant – a holy and pious procedure as it is called by the speaker (24–34) – following the narrative section, brings the past into the present trial in a rather emotional mode, strengthening the accusations against the Thirty for deception and showing that they were pleased to act as they did, even though they had the opportunity to avoid the crime.[20] Throughout the cross-examination the main argument is that Eratosthenes did nothing to prevent Polemarchus from being murdered, and that he worked for the interests of the Thirty not of the demos. Lysias actually asks the judges to get angry and furious against those who entered their houses. When he turns to the consequences of the judges' verdict upon aliens and Athenian citizens, Lysias cites as an example of a capital punishment in the past the case of the condemnation of the generals at Arginousae, even though they had won the battle. In a kind of epilogue, Lysias states that the charge has been fully argued and expresses sarcasm against the Thirty on account of their deeds (37–41).

A fresh start to the narration follows, which is a detailed historic account of the oligarchy of the Four Hundred, for involvement in which Eratosthenes is charged. The events are the following: the aftermath of the battle at Aegospotami, the conspiracy of the oligarchy before the rise of the Thirty against the democracy with Critias and Eratosthenes as leaders (43–4), the events after the regime was in power, the conduct and role of Eratosthenes as an overseer (45–7), and his lack of patriotism even after Thrasybulus had seized Phyle. Then, the civil war followed (48–52), and the behaviour of other members of the oligarchy, such as Pheidon's flight to Sparta, urging the Lacedaemonians to mount an expedition against Athens with Lysander as a leader (53–61). The historic account of these events runs through the period of political instability and disturbances, rhetorically amplifying Eratosthenes' illegal role as a tyrant and making him responsible for all the changes to the constitution.

This section of narrative goes back to the oligarchy of the Four Hundred and condenses the period down to the oligarchic revolution before the regime of the Thirty in order to underline Eratosthenes' continuous oligarchic position over a long period of time. The emphasis is placed upon Eratosthenes' oligarchic conduct before and during the oligarchy of the Thirty in such a way as to show his own responsibility for his choices and actions. Firstly, he should not have acted illegally but ought to have exposed the falsity of all the impeachments before the Boule (48–9). Secondly, he openly and without fear supported the Thirty, in particular, Theramenes, and did nothing to protect the safety of the Athenian *demos* (50–1). Moreover, he could have shown his patriotism after Thrasybulus had seized Phyle but, instead, he went with his partners in power to Salamis and Eleusis and led three hundred of the citizens to prison, and by a single resolution condemned all of them to death (52).

Lysias' rhetorical strategy in the presentation of the political tensions and relations during the rule of the Thirty is to offer a simplistic divergence between the oligarchs and the democrats. The label of tyrant for Eratosthenes, as one with and identical to the group of the Thirty, is emphatically stressed throughout the speech in a mode of historical simplification and forensic polarisation. There are no moderate oligarchs and no moderate democrats, there are only the tyrant Eratosthenes and his victims, who were the Athenian demos. Thus, Lysias rejects the view that opposing factions existed within the oligarchy of the Thirty, and even though Pheidon and Eratosthenes together with Hippocles and Epichares were allegedly the bitterest enemies of Charicles and Critias, they were only interested in greater power and quicker enrichment (53–61). In this context, Lysias divides the citizens into two groups, those who destroyed the city and those who struggled to save it during and after the civil war. In such a depiction of the political crisis, the Athenian demos has been represented as passive and silent when the oligarchy was coming to power, and this is emotionally and dramatically stressed just to remind the judges that now is their chance to give their verdict against them. The historical details in this section are used to arouse hostility for all the deeds of the tyrants in the shape of Eratosthenes.

It is interesting that in this narrative section time is condensed, whereas space is expanded to include all kinds of illegal actions on behalf of Eratosthenes and those associated with him, the city itself, the Peiraeus, Salamis, Eleusis and all other places where the crimes of the Thirty were committed. The association of Eratosthenes with Theramenes gives specific momentum to the reconstruction of the past, since these two persons share many similarities and appear to have a special connection and mutual political ideology.

The third narrative section (62–78) starts with the phrase φέρε δὴ καὶ περὶ Θηραμένους ὡς ἂν δύνωμαι διὰ βραχυτάτων διδάξω ('well now, I shall teach you about Theramenes in as few words as I can') and focuses on a prejudicial approach to Theramenes' career as deceiving the Athenian demos, being responsible for the oligarchy of the Four Hundred, for the murders of Antiphon and Archeptolemus, for the bad terms of the peace with Sparta, for the rise of the

Thirty and in general for all evils and shameful actions. What we have here is the narration of the same story and period focusing on the ambiguous personality of Theramenes for one reason only, to refute Eratosthenes' argument that he was associated with Theramenes, a moderate oligarch, and should thus be acquitted. The Athenians were witnesses and victims but were not all democrats or oligarchs. Lysias creates a polarization to alienate political differentiation and make all the members of the jury support the restored democratic constitution; in this light, Theramenes and Eratosthenes are no less guilty than anyone involved in the regime of the Thirty. The attack against Theramenes serves the purpose of arousing intense emotions against all enemies of the constitution, either out of fear or need for vengeance.

Lysias extends the period of Theramenes' oligarchic activity. Lysias starts from the oligarchy of the Four Hundred and emphasis is then placed upon Theramenes' contribution to the revolution before the oligarchy of the Thirty. He was trusted by the Athenians to negotiate the peace terms between Sparta and Athens after the end of the Peloponnesian War; he failed, however, to secure better peace terms, and he brought all the disasters to the city and encouraged the establishment of the Thirty in the Assembly with Lysander's intervention (68–78). The detailed account of the Assembly, where the Thirty were voted for by a minority of the Athenians out of fear, purposely expands the time when Theramenes was plotting against the democracy. It is plausible that those worthy men who had recognized the plot and preferred to leave the Assembly instead of voting for the Thirty are members of the jury in Eratosthenes' trial. The emphasis upon time and space is meant to remind them all that both Theramenes and Eratosthenes, since they shared similar conduct throughout a long period from the oligarchy of the Four Hundred until the oligarchy of the Thirty, are guilty of the overthrow of democracy. Theramenes' death is thus presented as worthy of his actions and Eratosthenes is the one who should now be convicted and punished with death.

Lysias 13, *Against Agoratus*

A similar strategy of polarization between two extreme groups, the oligarchs and the democrats, without leaving space for a moderate group, which most probably did exist in Athens during the political crisis of the late fifth century,[21] is also used in Lysias' attack against Agoratus in speech 13. Almost five years after the trial of Eratosthenes, Lysias composed the speech *Against Agoratus* which was delivered by a kinsman of Dionysodorus – a victim of the Thirty in a case of *apagōgē phonou*. This procedure was based on the arrest and trial of a suspected killer who was found in public places but the charge in effect involved homicide – a crime that was not allowed to come to trial after the Amnesty agreement, unless it was committed *autocheiriai* ('with one's own hand'). Despite the different procedural frame, both these public speeches of prosecution involve homicide referring back to the regime of the Thirty, where the main concept is the idea of intentionality focused on the defendant's degree of responsibility. With regards to chronology, Agoratus is tried

for his action which allegedly preceded the establishment of the Thirty, whereas Eratosthenes is prosecuted for a crime he committed when he was in power.

It is clear that various aspects of argumentation between Lysias 12 and 13 overlap. The narratives involve the oligarchic plots to eliminate innocent democrats on the basis of false charges (12.6/13.21). Though both Eratosthenes and Agoratus are presented as acting for personal profit, the differentiation in emphasis lies in the fact that Eratosthenes was a man of power, whereas Agoratus was used as a tool of those who were powerful.

The completeness of the narrative in speech 13 is striking given that it is a *synēgoria* speech, and it consists of 43 chapters, almost half the speech. In it, many details on the historical and political background are depicted from the period after the end of the Peloponnesian War onwards. Lysias' strategy is to show that the victims of Agoratus were the victims of the Thirty, so that Agoratus is presented not only as a murderer but also as an enemy of the democracy. Lysias' technique proceeds from general to specific and at the end of the section returns to the initial general point, constructing a ring composition. Starting with the defeat of the Athenians in the battle at Aegospotami, the speaker describes in full detail the period of civil conflicts in Athens between the oligarchs and the democrats until the restoration of democracy (403). While Theramenes was sent to negotiate peace with Lysander, as an ambassador with full power, conspiracies were fully in action in Athens before the establishment of the Thirty. The depiction of Theramenes reflects the same judgement on his conduct as in Lysias 12. He is accused of misleading the Athenian demos and conspiring against the constitution (12.68/13.9, 10). The attack is stronger in speech 12, where Lysias needs to anticipate Eratosthenes' appeal to his affiliation with Theramenes. Here, Theramenes is also described as responsible for the elimination of those who opposed the peace terms (13.17). At this point, of course, Theramenes was not acting alone; a group of oligarchs were conspiring against the constitution (12) and prepared the ground for the rise of the oligarchy (6). Their conspiracy had further support from the Boule of the year before the rise of the Thirty. The oligarchs plotted the death of Cleophon and also of all the opponents of the peace terms (i.e., taxiarchs and generals). It is interesting how Cleophon is also used in the same year (399 BC) at the trial of Nicomachus (Lysias 30) as a victim of the accused and the oligarchic plotters against the democracy before the rule of the Thirty, even though the speaker admits that Cleophon might have deserved the death penalty – but not for ideological reasons, as he was condemned because of the conspiracy of Nicomachus and the oligarchs at the time, immediately after the restoration of the democracy. The intertextual affinities show that the tension between oligarchs and democrats was a common rhetorical topos in reconstructing the past, recent or distant, before, during and after the regime of the Thirty, when litigants were represented as enemies of the city. In the context of the prosecution of Agoratus, it is important for Lysias to underline Theramenes' role during the negotiations between Sparta and Athens in order to strengthen the view that an oligarchic conspiracy had political control in the city before the subversion of the democracy.

Agoratus was involved as *mēnytēs*, an informer, and was brought to give information before the Boule and the Assembly. The prosecution needs to convince the judges that Agoratus deliberately denounced his victims in order to establish the charge of responsibility for murder. The claim that Agoratus was party to the oligarchic conspiracy against the democrats is stressed throughout the speech. According to the speaker's description of the oligarchic plot Agoratus' denunciation was organized so as to seem involuntary (19ff.). For this purpose, the Boule passed decrees for Agoratus' arrest on the basis of an allegation by a man named Theocritus that there were people acting against the constitution. The presentation of the decrees passed for Agoratus' arrest adds plausibility to the speaker's case. In order to convince the jury of the existence of the plot, Lysias attacks the Boule before the Thirty for its oligarchic conspiracy against the democracy. The whole idea of conspiracy and plotting creates a temporal duration for the oligarchic criminality and illegality. It all started with the Boule's initiative of bringing cases of *eisangelia* against citizens who clearly objected to the oligarchic plans. Agoratus was used, according to the speaker's case, for this purpose.

In order to support the argument that Agoratus willingly became a tool of the oligarchs, the speaker twice points out that he had rejected the chance he was given by his sureties to save his life and avoid giving any names (25–38, 52–4). The details of the incident are plausibly presented but are not substantiated. We hear that Agoratus' sureties were willing to accompany him and also that two vessels were prepared for the expedition. The fact, however, that no proof is offered raises some doubts over the reliability of the allegations. The speaker further indicates that if Agoratus had fled from Athens, he would have suffered no loss or harm on the ground that he was not an Athenian citizen. In fact, Agoratus may have had good reasons for not wishing to escape from Athens; he was presumably a privileged metic granted the right of *enktēsis*, and he may have had a family, run a business or owned property. Moreover, it cannot be known for certain whether Agoratus' safety was guaranteed by the democrats and it is possible that he put his faith in the oligarchs who were at the moment rising to power. It is even possible that he actually accepted bribes to act in accordance with the oligarchic plans. Nevertheless, his refusal to leave, if true, does not prove that he voluntarily made the depositions.

The narrative describes stage by stage the prosecution and conviction of the victims who were finally put to death by the Thirty. The speaker plausibly argues that if Agoratus had not made the denunciation, his victims would not have been subsequently put to death by the Thirty but would have been tried by the heliastic court of two thousand jurors (35–6). The argument focuses on the cruelty of the tyrants to put the blame on Agoratus.[22] The depiction of Agoratus as a benefactor of the Thirty for giving true information and in consequence being the only one released (38) is exaggerated; the speaker suppresses the point that Agoratus was tried together with his victims as a defendant and also that before the Thirty he had laid information under compulsion which he had not resisted (60–1). Here, strikingly, the emphasis is placed upon the specific trial of Dionysodorus and

allegedly of many other democrats, which was held by the Thirty in the most illegal way, blackmailing the judges to vote in accordance with the decision of the Thirty. The details of the existence of two urns, the one next to the other, first the convicting and second the acquitting one, with an open voting procedure are purposely given to dramatize the whole scene of the trial, to persuade the judges of Agoratus' guilt and to anticipate the request towards the end of the speech from the judges to vote now for a second time to acquit those democrats who had been then put to death and in revenge for their death to convict the Thirty and all the oligarchs who had conspired against the constitution (92–7).[23]

The most emotional and dramatic scene found in the narrative of the speech is the scene of *episkēpsis*, the process where final instructions are offered by the victims of Agoratus in prison to members of their families; here, the victim, Dionysodorus, supposedly gave instructions to his relatives to take revenge for his murder from Agoratus, naming him as a murderer and thus justifying the trial initiated by the victim's relatives against the defendant:

> ἐπειδὴ τοίνυν, ὦ ἄνδρες δικασταί, θάνατος αὐτῶν κατεγνώσθη καὶ ἔδει αὐτοὺς ἀποθνήσκειν, μεταπέμπονται εἰς τὸ δεσμωτήριον ὁ μὲν ἀδελφήν, ὁ δὲ μητέρα, ὁ δὲ γυναῖκα, ὁ δ᾽ ἥ τις ἦν ἑκάστῳ αὐτῶν προσήκουσα, ἵνα τὰ ὕστατα ἀσπασάμενοι τοὺς αὑτῶν οὕτω τὸν βίον τελευτήσειαν. καὶ δὴ καὶ Διονυσόδωρος μεταπέμπεται τὴν ἀδελφὴν τὴν ἐμὴν εἰς τὸ δεσμωτήριον, γυναῖκα ἑαυτοῦ οὖσαν. πυθομένη δ᾽ ἐκείνη ἀφικνεῖται, μέλαν τε ἱμάτιον ἠμφιεσμένη … ὡς εἰκὸς ἦν ἐπὶ τῷ ἀνδρὶ αὐτῆς τοιαύτῃ συμφορᾷ κεχρημένῳ. ἐναντίον δὲ τῆς ἀδελφῆς τῆς ἐμῆς Διονυσόδωρος τά τε οἰκεῖα τὰ αὑτοῦ διέθετο ὅπως αὐτῷ ἐδόκει, καὶ περὶ Ἀγοράτου τουτουὶ ἔλεγεν ὅτι οἱ αἴτιος ἦν τοῦ θανάτου, καὶ ἐπέσκηπτεν ἐμοὶ καὶ Διονυσίῳ τουτῳί, τῷ ἀδελφῷ τῷ αὑτοῦ, καὶ τοῖς φίλοις πᾶσι τιμωρεῖν ὑπὲρ αὐτοῦ Ἀγόρατον: καὶ τῇ γυναικὶ τῇ αὑτοῦ ἐπέσκηπτε, νομίζων αὐτὴν κυεῖν ἐξ αὐτοῦ, ἐὰν γένηται αὐτῇ παιδίον, φράζειν τῷ γενομένῳ ὅτι τὸν πατέρα αὐτοῦ Ἀγόρατος ἀπέκτεινε, καὶ κελεύειν τιμωρεῖν ὑπὲρ αὐτοῦ ὡς φονέα ὄντα. ὡς οὖν ἀληθῆ λέγω, μάρτυρας τούτων παρέξομαι.
>
> (13.39–42)

> When the death sentence had been passed, gentlemen of the jury, and it was time to die, each of them summoned to the prison his sister, or his mother, or his wife, or whoever was most closely related to each one. They did this so as to greet their families for a final time before dying. Dionysodorus summoned to the prison my sister, who was his wife. Hearing the summons, she arrived dressed in a black cloak, as was appropriate for one whose husband had been struck down by such a terrible fate. In the presence of my sister, Dionysodorus made arrangements for his household in the way he thought best. He identified this man Agoratus as the cause of his death, and he directed me and his brother Dionysius here, and all his friends, to take

> vengeance against Agoratus on his behalf. Believing that his wife was carrying his child, he directed her too, if she bore him a boy, to tell him as he grew up that Agoratus had killed his father, and to encourage him to take vengeance on Agoratus as a murderer for his father's sake. I shall produce witnesses that I am telling the truth.
>
> (trans. Todd)

It is striking that dramatization and emotional appeals are used here in a frame of legal process to strengthen the victim's statement that Agoratus is a murderer. Even though witnesses are presented, immediately after the scene of *episkēpsis*, it is unlikely that there was a legal impact of the victim's allegation but rather it is rhetorically manipulated to arouse the sympathy of the judges. A parallel scene of *episkēpsis* is to be found in Andocides' speech *On the Mysteries* – his own defence against the accusation of impiety (*asebeia*) in relation to the Eleusinian mysteries and the mutilation of the Herms after the Amnesty agreement towards the end of the fifth century. There is a vivid description of his imprisonment where a moving interactive discussion takes place between himself and his cousin Charmides on the issue of submitting the requested information in order to save his family (Andoc. 1.48–51). Andocides describes the *episkēpsis* made by the victims of the informer, Diocleides, in prison, where mothers, sisters and wives went to visit them. This narration presents the events just before Andocides' denunciation and aims to justify his action. Moreover, in the dramatic dialogue between Charmides and Andocides, the former tries to persuade Andocides to make the denunciation in order to save those who have supported him, with appeals to their emotions under the threat of death, especially after the execution of Andocides' friends. Finally, the dramatic tone reaches its peak with a series of rhetorical questions asked by Andocides, where he refers to his own misfortune and shows his desperation not to let 300 Athenian perish unjustly. The scene of *episkēpsis* in Andocides' speech functions in a similar way to the one in Lysias' speech reaffirming the circumstances or identification of persons involved in a denunciation and arousing the *pathos* of the audience.[24]

Finally, the narrative section in the speech *Against Agoratus* ends with the presentation of all the misfortunes which befell the city during the oligarchy of the Thirty. Emotional appeal is central to the narrative and is elaborated through *auxēsis* or *deinōsis*. Lysias maintains the fiction of a politically undifferentiated audience in order to engage their support. He manipulates the enmity against the Thirty and emphasizes their injuries to the city with the tragic effect that he arouses hostility against Agoratus. Sympathy for all the victims is emotionally built up in the figure of Dionysodorus.

Conclusions

The narratives of Lysias' speeches 12 and 13 display a parallel line of presentation of the events and persons involved in the period before, during and after the

oligarchy of the Thirty. In essence, they both break the spirit of the Amnesty agreement, though typically they follow the letter of the law. The narrative techniques involve temporal telescoping and expansion in order to place the emphasis on the guilt of the defendants. Space also plays a significant role in the form of a detailed account of location and movement in order to persuade the listener of the plausibility of the representation of the events.

In Lysias 12, *Against Eratosthenes*, the past presses very close and Lysias needs to persuade the judges of Eratosthenes' guilt of homicide. His reconstruction of the past involves three different phases: the first is the night of Polemarchus' murder while the Thirty were in power; the second goes back to the oligarchy of the Four Hundred and condenses the period down to the oligarchic revolution before the regime of the Thirty; and the third phase expounds a long period from the time of the peace negotiations with Sparta until the rule of the Thirty, focusing on the role of Theramenes. This pattern shows a strategy of time according to which Lysias initially telescopes and then expands for the closure. Similar emphasis on specific persons, such as Lysias' own experience during the night that his brother, Polemarchus, was murdered and on the oligarchs who were moving around houses of Athenian citizens (i.e., Peison, Melobius, Mnesitheides, Theognis), and the spatial locations where the events took place (i.e., Lysias' house, Theognis' house), provides details that reconstruct a persuasive representation of Polemarchus' murder and Eratosthenes' guilt. Polarization between groups of citizens who represent the 'democrats' and the 'oligarchs' is stressed to identify the victim with the first and the accused with the second, and as such enemies. Thus, homicide is presented as a crime committed out of enmity, cruelty and political opposition.

In Lysias 13, *Against Agoratus*, the narrative has a complex structure due to the intervention of emotional appeals. One significant element is that it does not follow a simple linear pattern. Lysias' technique follows a pre-emptive process by telescoping time, as for example when he jumps into the exile of the democrats while still narrating the events of the treaty between Sparta and Athens (13) or when he refers to the entry of Lysander without offering precise detail of the actual decision on the peace-terms (34). Later events are anticipated to establish arguments from motivation and to emphasize the scale of Agoratus' responsibility.

There seems to be some inconsistency within the events narrated in terms of chronology, which is due to rhetorical manipulation. Lysias uses the technique of expanding the time in which the events narrated allegedly occurred; in particular, he creates the impression that long periods intervened between certain events after the end of the Peloponnesian War in order to add plausibility to the presentation of political figures' role at the time. For example, he uses an interval to set up the oligarchic plot against the opponents of the peace with Sparta in order to convince the audience of Agoratus' collusion with the oligarchs (17). Whether the plot preceded or followed the convention of the Athenian Assembly to vote for the peace-terms in 404 and consequently whether the denunciations were made before or during the regime of the Thirty are questions that cannot be answered with certainty. It seems significant for the prosecution to distinguish Agoratus' action

from the crimes committed during the regime of the Thirty in order to strengthen the plausibility of his own action being voluntary and increase the degree of his responsibility. Therefore, Lysias needs to present the whole conspiracy as being initiated before the establishment of the Thirty. On the view that Lysias aims to implicate Agoratus in the surrender of the walls and the other misfortunes of the city, one can explain further chronological inconsistencies concerning the time when the plot was decided and when the victims openly expressed their opposition to the peace in the Athenian Assembly (15–17).

Another element of Lysias' narrative technique involves his way of presenting the facts; in both narratives, characteristically, he includes judgement in the form of explicit comments to influence the judges' response to the events narrated. The effect of this method is that the speaker creates the impression that the judges are free to have their own view of the story while simultaneously influencing their response to the defence case. Also, the use of short and effective comments distorts the factual events and presents the guilt of the defendants as inevitable. Such comments are made, for example, when Lysias in speech 12 explains that Eratosthenes committed homicide out of personal benefit and illegality, following a series of questions interrogating Eratosthenes over his responsibility for murder and continuing the arguments from probability to prove his own conscious actions (12.23–34); or when the speaker in Lysias 13 attempts to explain why Agoratus was chosen as the tool of the oligarchs (13.17–18), when he characterizes the oligarchic plot in advance (18), when he exploits the corrupt character of the Boule before the Thirty to imply that its decisions should not be trusted (20), and when he criticizes Agoratus' behaviour at the temple of Artemis to suggest that he had colluded with the oligarchs (25ff.).

Together with the application of the speaker's judgements within the narrative, in speech 13, Lysias makes unwonted use of *apostrophē*, as he also does in speech 12, especially in the cross-examination section and immediately after it. The deployment of *apostrophē* makes the emotional appeals more effective, as for example when the speaker manipulates the topos of servile behaviour to imply that Agoratus was bribed and therefore not afraid of being tortured in the Boule (26, 27). Also, at the end of the narrative section, the use of *apostrophē* emphasizes the guilt of Agoratus in contrast to the innocence of his victims (48).

To sum up, the narratives in speeches 12 and 13 are the most extensive in length in the corpus Lysiacum, in the first case two thirds of the speech, in the second more than half of the speech consists of narrative sections and elements. Both cases involve homicide, in particular, the responsibility of the defendants for the death of their victims, Polemarchus and Dionysodorus. In both trials, the legal cases are not strong since it is highly difficult to prove such an extent of intentionality in conspiracy and responsibility for murder that was not committed 'with one's own hands'. Moreover, the actual cases are rather weak, since neither enough proof nor evidence is provided to substantiate the allegations against the defendants that they were party to certain conspiracies of eliminating democrats, in the first case for money, in the second for taking away those who resisted the peace terms.

As has become clear, in the narratives Lysias intermingles facts with proof involving emotional appeals so that the audience is directed to accept the guilt of the defendants. Dramatic elements, rhetorical devices, characterization, conversations and justified motivations in the form of comments are widely used in both narratives in order to direct the audience's response and influence their verdict. Despite the many similarities of the speeches, however, the emphasis is different. The representation of *ēthos* follows a different line of argumentation in each speech. As a well-known political figure, Eratosthenes is attacked for his misconduct during the regime of the Thirty and is identified as being a representative of all of them. It is clear that he is 'one of them'. In effect, the attack uses other members of the oligarchy in order to establish the motivation of the defendant. In Agoratus' trial, the attack has a personal character. Although Agoratus may have had links with active political figures in the post-war political life of Athens, who were indirectly attacked through the present prosecution, he was not a prominent political figure and, therefore, the attack focuses more on his personality. Lysias offers a complete portrayal of his unscrupulous character in both private and public life. The speaker of Lysias 13 presents himself as a simple citizen who acts mainly from personal enmity and also public concern. The issue of personal vengeance determines the evaluation and judgement of political and historical evidence.

Notes

1 Edwards (2004: 352), and in this volume.
2 Edwards' analysis of the narrative sections in speeches from all orators (2004: 317–52) shows that the start of the narrative is clearly defined by metanarrative narratorial interventions, and various types of concluding remark indicate its close.
3 Wohl (2010: 217).
4 Ibid. 227.
5 For the events of this period, cf. Krentz (1982); Ostwald (1986: 460–524); Strauss (1986: 89–120); Wolpert (2002: 3–28); Wohl (2010: 201–6).
6 And. 1.90; *Ath. Pol.* 39.6. Further on the reconciliation agreement, cf. Loening (1987); Allen (2002: 237–42); Wolpert (2002: 30–5).
7 Cf. Loraux (1986: 145–69).
8 For *paragraphē*, cf. Wohl (2010: 204 with n. 15).
9 Ibid. 206.
10 Carawan (1998: 376–7).
11 For the decree of Thrasybulus, cf. *Ath. Pol.* 40.2. There has been much debate on the implications of Thrasybulus' decree for the date and delivery of this speech; cf. Edwards and Usher (1985: 337); Wohl (2010: 227 n. 44).
12 Wohl (2010: 228).
13 For the argument that *euthyna* was a preliminary procedure, which did not end up in a law-court, cf. Efstathiou (2009: 113–35).
14 Edwards and Usher (1985: 237).
15 Their relationship is reflected in the opening scene of Plato's *Republic*, which is set in Cephalus' house in the Peiraeus.
16 Trans. Edwards and Usher (1985: 157): φάσκοντες χρῆναι τῶν ἀδίκων καθαρὰν ποιῆσαι τὴν πόλιν καὶ τοὺς λοιποὺς πολίτας ἐπ᾽ ἀρετὴν καὶ δικαιοσύνην τραπέσθαι. Translations of Lys. 12 are taken from this volume.

17 For the structure of the speech, cf. Todd (2000: 116–17).
18 Wohl (2010: 229).
19 According to Todd (2000: 118 n. 7) the two doors are presumably outer doors leading into the street, since otherwise the reference to three doors at 12.16 would not make sense; Edwards and Usher (1985: 239) explain that the three doors are that of the room in which he was being detained, and two leading out of the back of the house, corresponding with the two (*auleios* and *metaulos*) in the front (for these two doors, cf. Lys. 1.17).
20 Further on other instances of cross-examination and the procedure, cf. Wohl (2010: 229, with n. 48).
21 After the restoration of the democracy in 403, the Athenians decided not to remember the evils of the Thirty, with the so-called Amnesty agreement. The climate, however, was polarized; all those who had suffered at the hands of the Thirty were seeking revenge and restoration, whereas those who had allegedly supported the Thirty by staying in the city during their regime were considered to be their enemies. This polarization is reflected in the forensic trials at the end of the fifth century and beginning of the fourth century, for example Lysias' speeches 12, 13, 16 and 30.
22 On the rhetorical topos of assigning the blame for the Thirty to litigants in court in the early fourth century, cf. Volonaki (2004: 33–51).
23 On the opportunity offered to the judges now to take revenge upon the death of the democrats and undo the past, Wohl (2010: 222) notes: 'Through the speech's temporal synopticism the jurors can undo the effects of time; years after the fact they can "catch the Thirty in the act" and bring them to a just and (at last) immediate punishment'.
24 Similarly, the instructions given by the father to his young son for revenge in Antiphon, *Against the Stepmother for Poisoning* (1.29–30), constitute an effective argument to arouse *pathos*.

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Chapter 10

As if you were there

Enargeia and spatiality in Lysias 1

Ruth Webb

Lysias' narrations were known in Antiquity as models of *enargeia*, defined by Dionysius of Halicarnassus as 'a certain power to make the subject matter accessible to the senses' (δύναμίς τις ὑπὸ τὰς αἰσθήσεις ἄγουσα τὰ λεγόμενα). As is often the case in ancient discussions of *enargeia*, Dionysius gives us little technical information about how this effect is achieved beyond saying that it comes from the attendant circumstances (what we might call circumstantial details) but his account of the impact of Lysianic *enargeia* gives a further clue. Its effect is to make the listener 'seem to see the things shown and to almost be in the company of (*homilein*) the characters whom the orator introduces'.[1] These two details suggest that this *enargeia* involves the power to make the reader or listener imagine that they can see the people, places and actions evoked and that they can enter into conversation with them.[2] Significantly, Dionysius' choice of words points to something far more radical than 'description' and 'characterisation through speech' (*ēthopoiia*) since the verb *homilein* implies not just conversation but presence in a shared space. Moreover, unlike some other sources on *enargeia*, he does not talk about it only, or even principally, in terms of the sense of sight but in terms of the senses (*aisthēseis*) in general.

Other, slightly later, treatments of *enargeia* point in the same direction. For Plutarch, Thucydides' mastery of this quality made his readers feel as if they were present at the battles he described, feeling the same sensations of shock and awe.[3] Returning to the domain of judicial oratory, Quintilian discusses these effects on several occasions, explaining the importance of 'showing' the judge what happened and defining the *enargeia* that results from the orator's own visualization of the scene as being the effect 'by which we seem to show what happened rather than to tell it; and this gives rise to the same emotions as if we were in the midst of the events themselves'.[4]

Of course, it is impossible to know what was going on in the minds of orators and their audiences, but the verbs of seeing or expressions involving the eyes (*pro ommatôn*, *hup'opsin* in Greek and 'sub oculis' in Latin) are constantly used to describe these effects.[5] We should not think of these as detailed representations, but as fleeting or partial impressions which are not necessarily or even primarily static.[6] When Quintilian describes his own response to reading a brief passage

from Cicero's *Verrines*, he shows that, from words indicating two figures in static postures, the listener's mind can make animated images – in the sense of images in motion and of characters invested with moral values, thoughts and intentions who can not only be seen but can also be heard and touched. If this particular example involves motionless figures, other passages characterized by their *enargeia*, like the Thucydidean battles mentioned by Plutarch, are of characters in action, meaning that *enargeia* can be a quality of narrations, as suggested by Dionysius.

Quintilian's account of his response to Cicero makes clear that the listener has a vital role to play in the reception of *enargeia*, calling on their own experiences and associations in order to create the image. As I will suggest below, these processes may also involve a form of reasoning with the result that *enargeia*, far from being a gratuitous spectacular effect in the domain of rhetoric, can be tightly bound into the persuasive project of the speech. So, although the arousal of emotion is an important function of *enargeia*, this is far from the whole story. As Dionysius and Plutarch suggest, the effect is closer to that of a three-dimensional immersive experience than that of viewing a static tableau and provides an understanding of what it might have been like to be plunged into the situation described. There is therefore a cognitive value in the use of *enargeia* that I will explore in what follows.

The example of Lysias 1

A significant example, to which I will devote the rest of this chapter, comes from Lysias, the ultimate master of *enargeia* according to Dionysius, and shows how its subtle use, intertwined with argumentation, can produce its effects. Lysias' own account of his escape from the house in which was about to be arrested by the Thirty is a well-known example that encourages the listeners to share the experience of moving through the space of the house and to share his emotions (Lys. 12.8–16). Here, though, I will focus on perhaps the most famous of all his speeches, the first oration *On the Murder of Eratosthenes* in which Euphiletus, an average Athenian, defends himself against a charge of murdering a young man named Eratosthenes.[7] Euphiletus does not deny that he killed Eratosthenes in his own house but claims that he had caught the young man in bed with his wife and thus argues that the law allowed him to inflict a summary penalty of death on the adulterer. Having announced his strategy clearly in the proem – he will show that Eratosthenes seduced his wife and that there was no other cause of conflict between them (**4**) – Euphiletus tells his audience the story of the early days of his marriage (**6–8**) which was initially happy, at least from his perspective, until Eratosthenes spotted his wife at a funeral and then seduced her, having approached her via the family's maid. Euphiletus then tells how he only discovered the affair when a mysterious old woman, sent by a love rival, sought him out and told him (**15–17**). Her account was confirmed by Euphiletus' servant girl, who was complicit in the affair (**18–21**), leading to the discovery of the couple *in flagrante delicto* by Euphiletus and his friends and the death of Eratosthenes (**23–6**). The case might

seem at first sight to be a difficult one to make: Euphiletus' defence depends on Eratosthenes' guilt but he does not offer any material evidence that Eratosthenes ever went near his wife, beyond the witness statements of his own friends and the reported statements of the old woman and the servant who are, of course, not present at the trial. At first reading, however, the speech is highly convincing and, if we accept that it was a real speech, the fact that it was preserved and given such a prominent position in Lysias' corpus suggests that it was successful.[8] As usual we can never be sure that the texts we have reflect exactly what was said, even assuming the trial was a real one, but I will assume that at the very least they reflect practices that were used.[9]

Narrative technique and persuasion

The unusually long narration, uninterrupted by witness statements or by intermediate argumentation, is particularly complex in its presentation in terms of time and voice. The narration is tightly focalized through Euphiletus: with the exception of his explanation of how Eratosthenes first saw and seduced his wife (**8**), everything is either experienced by Euphiletus as actor or told to him at the time by other characters (the old woman and the servant).[10]

To avoid any suspicion of entrapment or collusion, Euphiletus the defendant needs simultaneously to convince his listeners that the affair went on for a while and that, until the meeting with the old woman, he did not realize what was happening behind his back in his own house. The strict chronological ordering of events, combined with the focalization, creates a challenge as he needs to tell his audience of events that occurred at a time when he was not aware of them or of the significance of certain details (noises in the night and his wife's make-up). This requires him to create a distinction between Euphiletus the narrator (now, at the moment of the trial) and Euphiletus the actor (then, in the period leading up to the murder and on the night the murder itself),[11] and, on occasion, Euphiletus the narrator needs to intervene to comment on his own lack of knowledge at the time and to revise his prior understanding of events in the light of what he later learned (Todd 2007: 93).

Dionysius' assessment of Lysias' narratives points to an effect created by a variety of different techniques including *ēthopoiia* (in the technical sense of direct discourse pronounced by a particular character), the portrayal of character through the actions and judgements ascribed to a person, and the evocation of sights and sounds. All of these techniques are much in evidence in the first speech. At a primary level of *ēthopoiia*, Euphiletus is characterized through the plain style he uses with its repetitions and simple sentence structure.[12] Recounting the beginning of his marriage he uses repeated temporal clauses introduced by *epeidē* (**6**: 'when I decided to marry', 'when my son was born'; **7**: 'when my mother died') and expresses his initial trust in his wife (**6**: *episteuon*), an idea repeated later when he declares his lack of suspicion and continuing trust, even after the start of the affair (**10**: 'I never suspected anything but was so naïve that I thought my wife was the

most decent woman in the city'). This naivety is crucial to Euphiletus' defence. Although the speech made by his accusers is lost, he alludes to aspects of their case: that Eratosthenes was dragged from the street into the house and killed after taking refuge at the hearth (**27**) and that he deliberately sent the servant girl to ask him to come to the house (**37**). As has often been noted, Euphiletus' naivety and stupidity are offered as an implicit proof that he is incapable of organizing a plot to entrap an innocent man (Edwards 1999: 58; Carey 1989: 61–2, 66, 1997: 35–6; Todd 2007: 51), bearing out Dionysius' observation (*Lysias* 19.4) that Lysias excelled at constructing characters for his case (Bruss 2013).

So, although this is never spelled out, the character portrayal sets in motion a process of reasoning, as pointed out by Dow (2015: 101–2) with respect to Aristotle's identification of *ēthos* (character) as a class of proof (*pistis*): 'the speaker presents credible evidence of his reliability, I therefore believe what he says'.[13] Moreover, the type of reasoning involved in the particular case of Ephiletus is properly rhetorical in that it conforms to the definition of the enthymeme given by Aristotle (*Rhetoric* 1.2.13, 1357a) as a syllogism based on premises that are merely probable (here, 'only intelligent men are capable of planning') and in which not all the steps are laid out, leaving the audience to fill in the gaps for themselves. If a standard enthymeme leaves certain steps for the audience to fill in,[14] this example leaves everything to be filled in. The only step in the reasoning that *is* expressed in the speech is the minor premise 'I am not an intelligent man', and even this is expressed not in the form of an overt statement but is itself an inference to be drawn from the portrayal of Euphiletus through his own words and through the account he gives of his own actions.

Such an effective use of characterization to spark a process of reasoning of which the audience may not be fully aware perhaps helps us to understand what Dionysius meant when he said specifically of Lysias' narrations that they are 'pleasant like no others and credible and induce adherence without one being aware'.[15]

Dionysius' assessment points to the way in which such implicit arguments are all the more effective for not being presented in a direct statement that would invite contradiction. In what follows, I will suggest that the creation of a sense of proximity to the people and events works in a comparable way, not simply ensuring that the members of the jury feel involved in the case but encouraging them to engage in a process of reasoning that may not be entirely conscious. And, in this particular case, revolving as it does around events that took place within the confined space of a domestic interior, Lysias' ability to make the audience feel as if they are with Euphiletus in that space plays a vital role in the project of persuasion.

Narration and argumentation

In this speech, the lengthy uninterrupted narration is followed by a proof section in three parts: a very brief first part (**27–8**), representing a transition from narration

to argumentation, refuting the claims made by the accusation that Eratosthenes was dragged into the house and killed at the hearth, a longer second part (**29–36**) establishing that Athenian law allowed the husband to kill the wife's lover caught *in flagrante* and, finally, a refutation of the accusation's claims that Eratosthenes had been lured on purpose to the house (**37–42**) followed by a rejection of a list of other possible motives for the murder (**43–6**).

The overt arguments contained in the *pisteis* section of the speech thus focus on the legal question of the husband's right to kill the lover found *in flagrante*, on contradicting the accusation's allegation of entrapment via the servant and, finally, on discounting any other possible motive. The second two are closely entwined with the narrative although the expected relationship is reversed: rather than the arguments backing up the version of events told in the *diēgēsis*, they in fact depend upon the details of that *diēgēsis*. The clearest example of this comes in the second section (**37–42**) where the *eikos* argument against premeditation is based entirely on Euphiletus' own account of the fatal night. In what at first appears to be an irrelevant narrative digression, he tells us the story of how he met his friend Sostratus and invited him home to dinner, only to find out after Sostratus had left that Eratosthenes was in the house. Having been left alone he was forced to run from house to house to summon up enough friends to help him. Taking all the torches they could find from the nearest shop, they arrived back at the house (**22–4**). All these details are then repeated again as part of the argument against premeditation, phrased as a series of questions:

> If I had been plotting against Eratosthenes, wouldn't it have been better for me to eat out than bring a guest home … don't you think I would have contacted my friends during the day and told them to gather at the house of whoever lived closest?
>
> (40–1)

By creating this counterfactual narrative, Euphiletus offers his own characterization of the actions of a guilty man, distracting the listeners' attention away from the absence of external proofs of his own version of events.

If the strategy is persuasive, it is also because the preceding narrative (**22–4**) has succeeded not simply in conveying a series of facts about Eratosthenes' final night but has taken the listeners along with Euphiletus, making them into witnesses of events that he now uses as proof of his innocence. The audience have 'seen' as it were Euphiletus moving urgently from house to house, calling on his friends in succession, getting torches from the shop.[16] More than that, they have followed in imagination his progress from his house through the streets of Athens to those of his friends and back to the house in their company. Again, at no point does Euphiletus the narrator call attention to what he is doing. Although, to modern commentators, the use of *eikos* arguments is clear (Edwards 1999: 57) Lysias carefully avoids the technical vocabulary, preferring to make appeals to

his audience's expectations of reasonable behaviour in such a circumstance by repeatedly asking 'don't you think (δοκῶ ἂν ὑμῖν/ οὐκ ἂν δοκῶ ὑμῖν) [I would have acted differently if I had planned ahead]'.

The most significant topography in the speech is that of Euphiletus' house, the scene of the adultery (according to Euphiletus' version of events) and of the death of Eratosthenes (according to both parties). I will start from the account of the killing around which the case turns. This event occurs 'four or five days' after the servant confirms the existence of the affair. Euphiletus promises proof of this time lapse but this is never provided, instead he tells us that he first wants to recount to his listeners what happened on the last day (22).[17] There follows the story of Sostratus' visit, whose significance only becomes clear when Euphiletus uses it in his proof section as mentioned above. Then comes the climactic moment of the narrative as Euphiletus and his friends enter the house to find (he claims) Eratosthenes in bed with his wife. The presentation is particularly effective, evoking two successive moments witnessed by the first members of the group to enter and then the rest of them: 'As we pushed open the door of the room, those of us who were the first to enter saw him lying next to my wife, those who came in afterwards saw him standing naked on the bed' (ὥσαντες δὲ τὴν θύραν τοῦ δωματίου οἱ μὲν πρῶτοι εἰσιόντες ἔτι εἴδομεν αὐτὸν κατακείμενον παρὰ τῇ γυναικί, οἱ δ' ὕστερον ἐν τῇ κλίνῃ γυμνὸν ἑστηκότα). The restricted focalization ensures that the audience adopt the perspective of Euphiletus and his friends. This is not simply a question of narrative technique as the physical perspective merges with the ethical and the emotional perspectives: Euphiletus is, in effect, asking his listeners, without formulating the question explicitly, 'in my position, seeing what I saw what would you have done?' For this reason, techniques that encourage the listener to visualize and to place themselves in the speaker's place at the moment of the act in question are particularly important in speeches where the argument turns on the interpretation of that act, as here (Webb 2009: 145–52). Moreover, Euphiletus' presentation makes us all, ancient and modern readers and listeners alike, into virtual witnesses of incontrovertible signs of the act of adultery.[18] In the narrative that follows they also witness the actions of Euphiletus and crucially Eratosthenes' admission of guilt for which this part of the narrative is the only evidence:

> I hit him, gentlemen, and knocked him to the ground and bringing his hands behind his back and tying them I asked him why he was insulting me by coming into my house. And he admitted his crime but begged and pleaded with me not to kill him but to accept money.[19]

The change of perspective to that of a non-participating observer, is important in itself in that it allows us to understand, again obliquely, that Euphiletus was the only one of the party to attack Eratosthenes allowing the listeners to understand that the young man was not the victim of an attack by a group of men, as the accusation seems to have alleged.[20]

Seeing signs

In the manner of its telling, the narrative of Eratosthenes' final moments therefore conveys vital information about the cause and the manner of his death in a way that makes the listeners into virtual witnesses. When Euphiletus the actor addresses the maid, he demands, in direct speech, to see the adultery for himself, asking the servant to 'show (*epideixai*) this [i.e., the adultery]' to him and stating 'I have no need of words but for the deed to become manifest (*phaneros*)' (**21**). This serves two functions: it establishes Euphiletus as a man who does not act rashly without confirmation of the crime but crucially it serves to define the act of seeing the adultery as evidence of its occurrence. It is surely then no accident that the only explicit mention of the act of seeing in the speech occurs precisely at the point in the narrative where Euphiletus describes the group entering the house and seeing (*eidomen*, **24**) Eratosthenes lying next to the woman and then standing naked on the bed.

The embedded focalization, which shows us the act of adultery and Euphiletus' immediate reaction, does more than turn the audience into witnesses. It also invites them to 'place themselves in imagination' at a scene which they had not seen for themselves. The sense of space and of the position of the perceiving bodies within that space is vital to the overall effect: like Euphiletus and his companions as they enter the house from the street, the audience 'see' the two snapshots of Eratosthenes as guilty lover in an account that evokes not just the visual confirmation of the affair but the dynamic positioning and the restricted viewpoint of the participants on the fatal night. Crucially, the fact that this 'seeing' has already been defined in Euphiletus' exchange with the maid as conclusive proof of Eratosthenes' guilt primes the audience to accept it as such and thus, perhaps, to overlook the fact that it is a purely verbal creation, precisely the type of evidence for which Euphiletus claimed, in his speech to the servant, he had 'no need' (**21**: *ouden deomai logōn*).

Topography: being there

Most importantly of all, these actions are clearly situated within the topography of the house. Just as crucial to Euphiletus' case as his (apparent) intellectual limits is the layout of the house: the murder takes place downstairs in the part of the house that would normally be the men's quarters but has been given over to the wife. The house itself is merely sketched, in a passage remarked upon in Antiquity for its plain style.[21] 'I have a little house (*oikidion*), on two floors, with the men's quarters upstairs the same size as the women's quarters downstairs' (**9**). Euphiletus describes his dwelling and its layout in order to explain the unusual arrangements in place at the time of the affair: to avoid having to negotiate the stairs when she needed to wash the baby, the wife slept downstairs near the house's source of water while Euphiletus stayed upstairs (**9–10**). The detail is part of his self-presentation as a concerned husband but is essential to his explanation

of how the affair could go on for so long without his knowledge, as the arrangement would allow Eratosthenes to come and go freely.

However, as Anne-Marie Chanet has pointed out, if we try to push beyond Euphiletus' personal account of events to understand what was agreed by both sides about the events of that night we are left with a body on the ground floor of the house (perhaps discovered by neighbours alerted by noise).[22] If the ground floor where the murder took place was used by Euphiletus and freely accessible to his male friends, as he admits was normally the case, Eratosthenes was not killed in the women's quarters and Euphiletus' claim to be the victim of a habitual adulterer becomes a great deal less convincing. The story of the exchange of living quarters is therefore vital not just to explain how the affair could have been carried on for a period of time behind Euphiletus' back but also to support the claim that the victim was the wife's lover. There is thus good reason to suspect that the exchange of rooms might be a pure invention serving to explain the position of the body. Whatever the realities behind the case, Lysias deftly creates a firm impression of the three-dimensional topography of the crime without alerting his audience to his strategy and without resorting to description of the house as a structure, beyond the basic information mentioned above. He does this not by telling his audience about the house, nor by showing but by placing them within the space.

Two particularly detailed passages of the narration serve, among other things, to establish the domestic topography of the crime in the mind of the listener. Neither is essential to the main thread of the story though both play a vital role in the strategy of the speech as a whole. For that reason, they are worth particular attention. One is the account of a single night that serves by synecdoche to summarize the whole period (of unspecified length) during which the affair was allegedly carried on in the women's quarters downstairs under cover of night, while Euphiletus slept soundly upstairs.[23] It also serves to introduce several signs (*sēmeia*) of the wife's infidelity. The other is the account of the events of the final night just before the discovery of the couple by Euphiletus and his friends. In both, the evocation of space and the situated nature of the events related are of prime importance and this evocation is achieved through the use of prepositions and verbs and through a carefully crafted network of echoes.

The first of these episodes follows immediately on the explanation of the family's unusual living arrangements. Euphiletus has told his listeners that as a result of the exchange, his wife 'would often go off (*apieimi*) downstairs (*katō*) to sleep near the baby so she could feed it (literally "give it her breast") and it wouldn't cry' (πολλάκις ἡ γυνὴ ἀπῄει κάτω καθευδήσουσα ὡς τὸ παιδίον, ἵνα τὸν τιτθὸν αὐτῷ διδῷ καὶ μὴ βοᾷ, **10**). He does not explain the importance of this detail at this point but the audience's knowledge of the couple's living arrangements becomes essential in the episode that he goes on to relate. Returning home unexpectedly, Euphiletus found his wife apparently (*hōs*, **11**) pleased to see him. Even when the baby started crying from downstairs, she at first refused to go down until he insisted. When she did finally leave, Euphiletus claims that she locked him in

the upstairs room where he spent the night, blissfully unaware that Eratosthenes was in the house and that the maid had been making the baby cry on purpose to give the wife an excuse to go down and join him. This passage thus combines the perspective of Euphiletus the actor (taken in by his wife's act, unaware of the real reason why the baby was crying and of the presence of the other man) and Euphiletus the narrator, who is now able to see the significance of certain details that he, as actor, only 'understood later' (**11**: ὕστερον γὰρ ἅπαντα ἐπυθόμην). Euphiletus the narrator tells us just enough to make clear what was really happening while simultaneously conveying the limited perspective of Euphiletus the actor at the time. The strict chronological order is disrupted when he tells us what happened in the morning when his wife came to release him, 'When I asked her why the doors had made a noise in the night, she said that the lamp next to the baby had gone out and that she had gone to the neighbours' to light it'. The detail about the doors is presented obliquely, in an indirect question that is part of a genitive absolute, with the result that a sign (*sēmeion*) of the infidelity is slipped into the narration in a subordinate position. When Euphiletus tells us, in the sentence's main clause, that he accepted his wife's explanation for the noise and then failed to react ('Saying nothing about it, I went away in silence', οὐδὲν εἰπὼν περὶ τοῦ πράγματος ἐξελθὼν ᾠχόμην ἔξω σιωπῇ, **14**), he leaves the audience to reach their own conclusions about the wife's infidelity and his own blindness.

The episode serves to illustrate by a single example, how Eratosthenes could have repeatedly visited Euphiletus' wife at night. It is also a key part of the vivid characterization as the wife is seen to be manipulative (in her feigned happiness to see her husband) and in control of the situation while Euphiletus himself comes across as naïvely trusting and the victim of the women's machinations. I would suggest, however, that these are only secondary concerns and that the most important function of the episode is that it serves to establish in the listeners' minds the topography of the upside-down house and its occupants: Euphiletus upstairs in his room, formerly the women's quarters, the maid downstairs with the baby and the lover, the wife moving between the two and ensuring that her husband stays in his place by the ruse of locking the door.

In recounting this episode from the restricted perspective of the tired labourer confined to his upstairs room Euphiletus encourages his audience to share his experience and to understand his lack of reaction at the time. However, this experience does not stop at the words exchanged and the noises heard in the night but includes the exact positioning of Euphiletus (upstairs, immobile) in relation to the other characters in the story. Lysias achieves this effect with great subtlety, not by describing the setting or by stressing the factual information but through the echoes of verbs and prepositions. When Euphiletus recounts the conversation with his wife provoked by the baby's crying (which we understand to be coming from downstairs) he repeats elements of his description of their living arrangements: 'I kept asking her to go away and feed the child so it would stop crying' (ἐγὼ τὴν γυναῖκα ἀπιέναι ἐκέλευον καὶ δοῦναι τῷ παιδίῳ τὸν τιτθόν, ἵνα παύσηται κλᾶον, **12**) but the same verb (*apeimi*) has just been used in his account of their

living arrangements when he explained that 'often she would go away *downstairs* (*katō*) to sleep near the child, in order to feed it so it wouldn't cry'. The preposition (*katō*) is missing but the reader/listener understands by now for herself. When we hear about the doors banging in the night therefore, we understand too that this was heard from upstairs without this needing to be said. Similarly, now that the wife's quarters have been established as being downstairs, the choreography of the final evening can be sketched in with a few touches. In case we had forgotten the upside-down arrangement of the house, Euphiletus deftly reminds us in his account of his friend Sostratus' visit: 'arriving at my house', he explains, 'we went up (*anabainōo*) to the upper room and had our supper' (**23**). After Sostratus has gone away (*apeimi*), Eratosthenes enters (*eiserchomai*). Then, when the servant announces that the lover is in the house, Euphiletus tells us that he 'went down (*katabainō*) in silence and went out of the house (*exerchomai*)'. Three lines later, in our printed texts, Euphiletus relates how, after rounding up his friends they made the opposite movement, bursting into (*eiserchometha*) the house from the street through the main door and immediately coming upon the couple after 'pushing open the door of the bedroom' (ὥσαντες δὲ τὴν θύραν τοῦ δωματίου) which is firmly established in the audience's mind as being on the ground floor.

Nowhere is there any description of the material qualities of the building or its parts. We never know what it was built of, exactly how large or small it was, where the bed stood in relation to the door, or how the stairs led down into the courtyard. All the work is done by the prepositions and the verbs of movement that serve to define the space of the crime through the movements of the characters within it, movements that the listeners are made to share in their kinaesthetic imagination. The terms in which Sostratus' visit is described serve to repeat the pattern established earlier in the speech of Euphiletus going up (*ana*) while his wife is downstairs (*kato*). What is more, the comings and goings of the final night involve Sostratus going away (*apo*), Eratosthenes coming in (*eis*), Euphiletus going down (*kata*) and then out of the house (*ex*) before returning with his friends and repeating the final movement through space of Eratosthenes expressed through the verb *eiserchomai*. All these verbs encourage us to develop a kinaesthetic understanding of the choreography of that night with the result that it goes without saying that Eratosthenes is to be found downstairs and that downstairs is the domain of Euphiletus' wife. These tiny details are essential because of the importance of the layout of the house in the speech overall. One of the reasons we accept this version of events is that the repeated evocations of movements upstairs and downstairs and, in particular, the story of Euphiletus being locked in the upper room by his wife, have established clearly in our minds the relative topography of the dwelling and the fact that Euphiletus occupied the upstairs part of the house so that a man found downstairs would not be in his proper place but would be trespassing in the area now assigned as female space.

This most important piece of information is not presented overtly as an argument (of the type 'The body was found downstairs but I have told you that the downstairs was where my wife slept therefore the body was found in her area of

the house') and there are good reasons for this: the presentation of this information as an argument invites counter-arguments. By carefully building up a picture of the three-dimensional setting of the affair and the subsequent murder and taking care to place the characters within this framework (Euphiletus and his friend Sostratus upstairs, as the preposition and the verb remind us, the wife downstairs), the mention of the doors banging in the night (**14**) serves, through its enhanced *enargeia*, to create a particularly strong impression in the listener's mind of this relative placement, since Euphiletus as he perceives this ambiguous noise is removed from its source, unable to see exactly what its cause is. Similarly, the wife's explanation of this noise – that she had to go to the neighbours' to light the lamp – may serve to confirm Euphiletus' later argument that Eratosthenes could not have run to the hearth as it makes clear to the audience that there is no source of fire in the wife's bedroom. The listener who remembers all these details about the spatial organization of the house and the gendering of its parts is therefore primed for persuasion before the *pisteis* section even begins and this, I think, is an example of what Dionysius means when he says that Lysias' narratives persuade without the reader realizing it. This is not to claim that the narrative alone is sufficient to persuade but rather that the work it does is significant and prompts the reader to engage in various processes of inference that are all the more powerful for being unspoken.

Conclusion

Within the speech composed for Euphiletus, this effect is achieved by the creation of the mental spatial awareness through a use of *enargeia* that is only partly visual and creates a sense of being physically present within the scene, alongside the participants. Although this effect is particularly important in this speech, because of the crucial fact that Eratosthenes was killed in what would normally be the men's area of the house, we can see parallels in other speeches. When Demosthenes describes the devastation that he witnessed at Phocis in order to attack Philip, its perpetrator, and Aeschines, Philip's ally at Athens, he does so from the standpoint of an observer of the scene, inviting his listeners to share his experience as witness and his emotional response to the scene. They are also invited to engage in a process of inference that takes them from the scene of ruined houses and walls, described by Demosthenes in a few words, to Philip and then to Aeschines and to associate the actual sight of Aeschines present before them with the scene of suffering conjured up by his opponent.[24]

In this example, although the position of the observers in relation to the events is emphasized, their motion is not. Elsewhere we do find invitations, similar to those of Lysias 1, to follow the actors in the narration through space. Lysias 12 is one example, mentioned above, others are Demosthenes 54, *Against Conon*, Lysias 3, *Against Simon* and Aeschines 1, *Against Timarchus* where the alleged events are situated dynamically within the topography of Athens. In all these cases, I would argue, the careful positioning of the dramatic and violent acts in

question within the spatial framework of Athens is not only an 'effet de réel' aimed at creating increased plausibility but serves to situate the listener within the events, sharing the point of view of the speaker (in Demosthenes 54 and Lysias 3) or of an observer at the time (in Aeschines).[25] The impact of *enargeia* within a narration may thus be simultaneously emotional and cognitive, leading to a fresh understanding of the people and events in question.

Notes

1 Dionysius of Halicarnassus, *Lysias* 7: ἔχει δὲ καὶ τὴν ἐνάργειαν πολλὴν ἡ Λυσίου λέξις. αὕτη δ' ἐστὶ δύναμίς τις ὑπὸ τὰς αἰσθήσεις ἄγουσα τὰ λεγόμενα, γίγνεται δ' ἐκ τῆς τῶν παρακολουθούντων λήψεως. ὁ δὴ προσέχων τὴν διάνοιαν τοῖς Λυσίου λόγοις οὐχ οὕτως ἔσται σκαιὸς ἢ δυσάρεστος ἢ βραδὺς τὸν νοῦν, ὃς οὐχ ὑπολήψεται γινόμενα τὰ δηλούμενα ὁρᾶν καὶ ὥσπερ παροῦσιν οἷς ἂν ὁ ῥήτωρ εἰσάγῃ προσώποις ὁμιλεῖν. ('Lysias' style is characterized by a high degree of enargeia. This is a certain power that brings the subject of the speech before the senses, it arises from the inclusion of attendant circumstances. The reader who pays attention to Lysias' speeches will not be so clumsy or difficult or slow-witted that he fails to see the things shown and to almost be in the company of the characters whom the orator introduces').

2 Dionysius himself cites Lysias 32, *Against Diogeiton*, as his example and this speech is noteworthy for its use of embedded *ēthopoiia*, where the speaker quotes other characters, in this case a woman (12–13, 15–17; see Carey 1989: 207 and ad loc.) and the male relative accused of defrauding her and her sons (9).

3 Plutarch, *On the Glory of the Athenians*, *Moralia,* 347A.

4 Quintilian, *Institutio oratoria* 6.2.32: Insequetur ἐνάργεια, quae a Cicerone inlustratio et euidentia nominatur, quae non tam dicere uidetur quam ostendere, et adfectus non aliter quam si rebus ipsis intersimus sequentur. See also ibid. 8.3.62–71.

5 Recent research in cognitive science supports the hypothesis that words can spark a vision-like experience in the brain, involving the same regions as are involved in seeing with the physical eyes. Research into responses to action verbs suggests further that hearing about actions can spark a response similar to that caused by carrying out the action itself; on this see Bolens (2012).

6 In Aristotle's discussion of the ability of metaphor to place before the eyes at *Rhetoric* 3.10.7–11.2 1411b metaphors in which the vehicle is an entity in motion are said to have this quality. See also Calboli Montefusco (2005).

7 For the hypothesis that this Eratosthenes may have been a younger relative of the Eratosthenes of Speech 12 see Carey (1989: 72); Todd (2007: 59–60).

8 For an assessment of the impact of the speech on the all-important first reading (or listening) see Todd (2007: 49). For arguments against accepting the trial as a real event see Porter (1997). I am grateful to Mike Edwards for discussion of the likely outcome of the trial. Unscientific surveys of students' reactions after a first reading also suggest that the speech is convincing at first but that assessments change significantly after analysis.

9 See the discussion of this issue in O'Connell (2017: 17).

10 For an analysis of the narrative technique see, in particular, Vianello de Córdova 1990: xxvii–xliii.

11 For a similar distinction between the legal time of the trial and the time of the narrated events see Wohl in this volume.

12 See Todd (2007: 101) who notes the careful variation that accompanies the repetitions. At a secondary level of *ēthopoiia*, the speech includes fragments of direct discourse said to have been pronounced at the time by Euphiletus and to him by other characters,

in addition to fragments of reported speech. These include the speech of the old woman as she reveals the affair (**16**) and Euphiletus' own words as he confronts the maid with his newly acquired knowledge (**18, 21**). His wife is also quoted directly (**12**) while the final words of Eratosthenes himself are reported through indirect speech.

13 *Ēthos* can also be interpreted as an *eikos* argument (cf. what follows on the enthymeme) in so far as a positive description of one's behaviour (especially in the orators where character is presented as unchanging) induces the dikasts to believe that it was not possible for a man such as the speaker to have committed the crime of which he is accused.

14 Aristotle's example at *Rhetoric* 1.2.13, 1357a is that of the athlete who has won a crown, the speaker does not need to spell out the fact that this means he is an Olympic victor as the audience can supply this knowledge for themselves.

15 DH, *Lysias* 18.3: αἱ διηγήσεις … ἡδεῖαί τέ εἰσιν ὡς οὐχ ἕτεραι καὶ πιθαναὶ καὶ τὴν πίστιν ἅμα λεληθότως συνεπιφέρουσιν.

16 The use of the present tense here encourages this sense of immediacy and of participation in a process.

17 On the state of the text here, see Todd (2007: 115–16). The lack of the promised proof led editors beginning with Reiske and including Chiron (2015: 39) and Carey (1989: 72) to suggest a lacuna. I am in agreement with Todd that the vagueness here is a convenient way of glossing over the precise chronology of the final stages of the story. The emendation proposed by Edwards (2005) preserves this vagueness.

18 For discussion of the conditions in which the couple had to be found to justify the death of the adulterer see Todd (2007: 119).

19 The moment when Euphiletus kills Eratosthenes is not 'placed before the eyes' of the audience, presumably in order not to focus their attention on Euphiletus as killer but to preserve his role as victim and as representative of the law.

20 This accusation is implicit in the allegation that Eratosthenes was dragged into the house (**27**). The presence of the others is referred to in this same passage, as part of a refutation of the allegation that Eratosthenes took refuge at the hearth, an impossible act if there were so many people there. The friends thus figure only as defenders and not as aggressors.

21 Demetrius, *On Style* 190.

22 This interpretation is presented by Chanet (1990: 105) in her reconstruction of the accusation speech, in Greek.

23 The period of the affair is emphasized by Euphiletus' suggestion that the new arrangement of the house obtained for a long (albeit unspecified) period of time after the child's birth.

24 Dem. 19, *On the False Embassy* 65. See Webb (2009: 152–4) and O'Connell (2017: 131–6).

25 The term 'point of view' has been replaced in narratological analyses by that of 'focalization' for very good reasons. Here, however, the spatial metaphor is entirely appropriate.

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Chapter 11

Temporal irony in Athenian forensic narrative

Lysias 1 *On The Murder of Eratosthenes*

Victoria Wohl

This chapter explores the ironic structure of time in the narratives of Athenian forensic oratory. That narratives exist in time is obvious to anyone who has ever told a story from 'once upon a time' to 'the end'.[1] But since 'once upon a time' can be conceived only from the perspective of 'the end', narrative temporality is always double: stories unfold at once prospectively, from beginning to end, and retrospectively, from end to beginning. Lysias – famed already in antiquity for his power as a story-teller – overtly deploys this dual temporality and develops it into a rhetorical strategy and a legal hermeneutic. My chapter examines the temporal doubleness of Lysianic narrative and its ironic implications.

My case study is one of the narratively richest speeches in the corpus of Attic oratory: Lysias 1 *On the Murder of Eratosthenes*. This famous speech tells a gripping tale of adultery, intrigue and murder. This tale is twice-told, simultaneously forward – in narrative time – and backward – from the later perspective of the trial. That temporal doubleness is elaborated in the form of an irony that structures the speech as a whole. Irony lets the speaker and the jurors occupy past and present at once, a dual perspective that brings a tragic sensibility to a potentially comic scenario. More than just a rhetorical device, irony becomes a generalized sensibility, a 'hermeneutics of suspicion' that both underwrites the speaker's case and ultimately undermines it, casting its ironic light on the speaker, his story and the law itself.

The stories of forensic oratory – the *diēgēsis* or narrative account of the case – perhaps even more than other kinds of story-telling, involve a double temporality, a split between what I will call 'narrative time' and 'forensic time'. Narrative time aims to reproduce the event's happening as it happens, to evoke the past in the present tense. It is characterized by vividness of detail and an aleatory quality: things seem to occur at random; they are not part of a larger plan leading to some discernible end. Narrative is thus marked by a certain ignorance, as it aims to convey an immanent sense of the present without the advantage of foresight or hindsight. Forensic time, by contrast, looks back on the past event from the present trial and from this retrospective vantage point it constitutes the past *as* past – fixed, finished and irrevocable. This preterite aspect, as Aristotle notes in the *Rhetoric* (1.3.4), is characteristic of forensic oratory 'since both prosecution

and defence speak about events that have happened'. From the present moment of the trial, the orator looks back on the event with full knowledge of its outcome and situates it within a continuous chronological sequence of past-present-future: past crime, present trial and future justice. Together these two heterogeneous temporalities – narrative and forensic – constitute a law that is at once timeless and eternally present.

Lysias 1 operates within this dual temporality. The speaker, Euphiletus, was happily married with a newborn baby when the trouble began. He tells how Eratosthenes caught sight of his wife at her mother-in-law's funeral and promptly set about seducing her. At first ignorant of the adultery that was going on under his nose in his own home, Euphiletus is clued in by a bitter ex-lover of Eratosthenes', and her insinuations are confirmed by the slave who served as his wife's go-between. The next time Eratosthenes sneaks into his house, the slave wakes him. He quickly gathers friends from the neighbourhood, and with them as witnesses, catches Eratosthenes in bed with his wife, whereupon he strikes and kills him. Euphiletus is now on trial for murder. He defends himself on the basis of the Draconian law of homicide that stipulates that a man may legally kill another man found *in flagrante* with his wife, mother or sister. The prosecution, Eratosthenes' family, is arguing that the scene was a set-up, that Euphiletus lured Eratosthenes into his house precisely so that he could kill him with impunity. Euphiletus' defence rests squarely on the strength of his story-telling, the persuasiveness of his narrative of the events leading up to the murder of Eratosthenes.

This story unfolds within the dual temporality of legal narrative. The *diēgēsis*, which fills nearly half this short speech, is an unparalleled example of the *enargeia* (narrative vividness) for which Lysias was famous. Dionysius of Halicarnassus praises this quality in the orator, noting his grasp of details and ability to convey them to his audience's senses: 'No one who pays attention to Lysias' words will be so dense, churlish, or dull-witted that he won't feel like he is seeing what is presented as it is happening (γινόμενα τὰ δηλούμενα ὁρᾶν) and encountering face-to-face the characters the orator introduces' (*Lys.* 7). Scholars have documented the techniques by which the logographer produces this sense of immediacy: the little details of domestic life, the conversations recounted in direct discourse, the ubiquitous present tense.[2] The last is particularly telling: *enargeia* is a technique not just of visibility but also of temporality, a sense (as Dionysius suggests) of watching things happen as they are happening, in real time. This sense is achieved by the insistent temporal markers that situate each event within a progressive chronology where the perspective is always that of an immanent present-of-the-past. 'When I decided to marry …', Euphiletus begins; 'but when our child was born …', he continues; 'at first …', 'but when my mother died …', 'at this point …', 'first…', 'next…', 'as time went on …'. We get some two dozen expressions of time in the first nine sections of the *diēgēsis* (just two Oxford Classical Text pages). These temporal markers give the impression of moving through time *in* time, keeping step *with* time as it advances (προϊόντος δὲ τοῦ χρόνου, **11**). This chronology is also naturalized, keyed to the passing of generations (the birth of

a child, the death of a parent), the agricultural cycle (with Euphiletus' daily journeys to and from the fields) and the natural rhythms of the day. The passage of time is noted even when nothing much is happening (τὸν μὲν ἄλλον χρόνον, **6**; ταῦτα πολὺν χρόνον οὕτως ἐγίγνετο, **10**; προϊόντος δὲ τοῦ χρόνου, **11**; χρόνου μεταξὺ διαγενομένου, **15**). Those empty stretches contribute to the sense that the unfolding of the narrative simply *is* the unfolding of time.

This sense of being present in the past obviously contributes to the story's *enargeia*. But it also serves the more pointed forensic goal of forging an identification between speaker and jurors.[3] This is crucial to the speaker's case, as he notes in the opening sentence:

> I should greatly appreciate it, gentlemen, if in this matter you were the same sort of judges on my behalf as you would be on your own behalf if you had suffered these things. For I know well that if you had the same judgment (τὴν αὐτὴν γνώμην) of others as you have of yourselves, there is no one who would not be enraged at what has happened, but all of you would consider paltry the penalties for those who engage in such practices.
>
> (1)

The speaker asks the jurors to judge the crime against him the same way they would if it had happened to them. That shared judgment (τὴν αὐτὴν γνώμην) is forged through a shared perspective on events, which in turn depends on a shared location in time. The speech's vivid present temporality retrojects the jurors back into Euphiletus' past and allows them to experience that past in the present, as victims not as judges. They move alongside Euphiletus through time, seeing things as he does and feeling them as he does, sharing his ignorance of what's to come.

But of course this sense of presence is pure artifice, for the jurors do know what's to come. They don't really occupy the time of the narrative but instead its future – the trial – and they look back upon the story with forensic hindsight. This brings us to the second temporality of the *diēgēsis*, the forensic preterite. This temporality, too, is vital to Euphiletus' rhetorical strategy, as he says at the start: 'I will tell you my whole affair from the beginning, omitting nothing but telling the truth (τἀληθῆ). For I consider this my only means of salvation, if I am able to tell you everything that happened' (**5**). An exhaustive chronological account – starting at the beginning, ending at the end and omitting nothing in between – will constitute the truth, τἀληθῆ. The ubiquity of temporal markers in the *diēgēsis* also contributes to this chronological completeness: every moment is documented – even those in which nothing happens – and each event is put in its chronological sequence. In this retrospective account, chronology is causality: *post hoc* equals *propter hoc* and the *diēgēsis* functions as legal exegesis, an exegesis of the criminal past from the standpoint of the forensic future.

Far from obscuring this temporal perspective in his pursuit of *enargeia*, Euphiletus draws attention to it with interjections into the narrative from his own future self: 'Later I learned everything' (**11**; cf. **15**). These interjections, with their

strong antithesis between prospective ignorance and retrospective knowledge, mark the preterite temporality that constructs the past as past from the perspective of the present. Together these two temporalities constitute the temporal unity of the law itself, which is both timeless and present in each present moment. In the proemium (**2–3**), Euphiletus stresses the universality of the law against adultery. The opening gambit of identification between jurors and speakers – if you experienced what I did you would reach the same judgment as I – is extended across space: 'that judgment would stand not only for you but throughout all of Greece' (**2**). It is also extended in time, for adultery is the only crime, Euphiletus tendentiously claims, punished the same way in democracy and oligarchy alike (**3**). In a speech notably bare of contemporary references, this sentence alludes obliquely to Athens' tumultuous recent history in order to posit the eternal validity of the law. Extending synchronically across Greece and diachronically across political regimes, the law exists both in the now and in the always.

For Lysias, then, the doubleness of perspective and chronological framework inherent in all story-telling provides the basis for both a legal strategy and a vision of the law. He develops this temporal structure through sustained engagement with a specific rhetorical structure, irony. Irony is the master trope of this speech. It is, in essence, a trope of doubleness. Quintilian defines *eirōnia* as a trope or figure in which 'something contrary to what is said is to be understood' (9.3.44–6). If I say 'charming weather' when it is pouring with rain, you know I mean the opposite of what I say: it is a misrepresentation intended to be understood as such. Irony thus relies for its rhetorical charge upon a double perspective, a naive perspective (you think I find a downpour charming) and a canny perspective (you understand what I really mean). In this speech irony's dual perspectives emerge as a function of time. Events that mean one thing from the naive viewpoint of narrative time, as they are being experienced, are shown to mean the opposite in forensic retrospect, from the canny standpoint of the trial. Euphiletus occupies both positions: as today's sadder but wiser defendant he casts an ironic eye back on his previous ignorant self, a man so obtuse he didn't see the real meaning of the door squeaking in the night or his wife's made-up face. How could such a credulous fool have orchestrated an elaborate entrapment scheme?

So irony obviously serves the speaker's case. But irony is a perilous forensic strategy. *Eirōnia* comes dangerously close to lying. In fact, Aristophanes uses the word to denote wilful deception (*Wasps* 174, *Birds* 1211), including courtroom deception (*Clouds* 449). As a rhetorical trope, *eirōnia* denotes misrepresentation without intent to deceive. Aristotle defines *eirōnia* as the opposite of *alazoneia*: the latter is pretending to know more than one does, the former less. But Aristotle considers both alike deviations from the truth *(Eth. Nic.* 2.7.12, 4.7.2–6).[4] Irony's lies may be honestly intended but they still involve falsification: saying one thing and meaning another. For obvious reasons, forensic orators were usually at pains to avoid any hint that they did not mean precisely what they said. It isn't surprising, then, that irony is an extremely unusual strategy in Athenian forensic oratory. Irony isn't discussed in Aristotle's *Rhetoric*, and it barely figures in the indices

of rhetorical handbooks like George Kennedy's *The Art of Persuasion in Ancient Greece*. The trope occurs often enough in the limited form of a sardonic barb or pointed antithesis: for example, when a speaker refers to his opponent as 'this worthy gentleman' and represents his criminality as the pinnacle of civic virtue. But as a general architectural feature of a speech it is very uncommon. In fact, I can think of only one real parallel of a speech whose whole argument relies on irony, and it makes for an illustrative counterexample.

In Lysias 24 *For the Disabled Man*, the speaker is a handicapped citizen suing for his disability pension.[5] His opponent claims that he is able to work and therefore disqualified from the dole. The speaker's tone throughout is bitterly ironic. My opponent claims I am not handicapped, he says: well, if that's true, why not take the dole from me and give it to him? (**13**). My opponent claims that I am not poor because I ride a horse; but I ride a horse because I can't afford a mule with a padded saddle; by his logic I'm fortunate because I walk with two crutches whereas others need just one (**12**). In these ironic statements, falsification – misrepresenting a disabled man as able-bodied – is attributed to the opponent as a mode of deliberate deception. This is clear at **14**:

> My opponent has come to dispute over my misfortune as if I were a wealthy heiress, and tries to persuade you that I am not such a man as you can all see. But you must trust more in your own eyes than in his words; this is the task of sensible men.

To his opponent's dissimulation the speaker juxtaposes the evidence of his own manifestly crippled body. His body means just what it says. He and the jurors both know that and only a liar would claim otherwise.

The ironies of Lysias 24 are presented as comic: the speaker claims his opponent isn't serious but 'is just playing around … trying to make a joke of me (κωμῳδεῖν), as if he were saying something clever' (**18**). The ironies of Lysias 1 have also been read as comic. In a famous article, John Porter (1997) argues that *On the Murder of Eratosthenes* was constructed on the model of comic adultery narratives, drawing on such stock elements as the rakish adulterer, the slave go-between, the rejected former mistress, and – of course – the doltish, cuckolded husband. Tracing parallels with Aristophanes and Menander, Porter argues that this speech was not composed for delivery in a real trial, but instead was a sophisticated rhetorical exercise. Porter's conclusion has not been generally accepted. Michael Gagarin (2003) argues that the very literary features Porter takes as evidence of inauthenticity are in fact typical of Athenian forensic oratory, which relies on persuasive story-telling as much as on evidence and reason. My interest here is not so much in Porter's conclusion as in his identification of the speech's ironies as comic. To be sure, Euphiletus invites a sardonic shake of the head at his own past gullibility. Like the disabled speaker in Lysias 24, he shares with the jurors a grim laugh at his own expense. But overall, the irony of this speech strikes me as more tragic than comic.

Tragic irony relies on the same temporal split I have been discussing in Lysias. Events mean one thing from the perspective of the characters, moving forward through the (narrative) time of plot and play; they mean something different – even opposite – from the retrospective viewpoint of an audience that knows the myth or from the omniscient viewpoint of the gods. The *locus classicus* is, of course, Sophocles' *Oedipus Tyrannus*. Oedipus thinks he is king of Thebes and husband of Jocasta; he thinks he knows the meaning of his words and actions as he works to find Laius' murderer and save Thebes from the plague. But the audience knows all along the truth that he will ultimately discover: that these things all mean the opposite of what they seem. The play is structured by the same temporal antinomy as Lysias 1: the ignorant temporality of the dramatic narrative as it unfolds and the retrospective temporality that views the actions with horrified knowledge. This antinomy produces intense ironies of plot and language, as Oedipus, fleeing the oracle of parricide and incest in Corinth, comes to Thebes where he commits parricide and incest, thereby fulfilling the oracle.[6] The play reaches its famous simultaneous *anagnōrisis* and *peripeteia* when prospective and retrospective temporalities align: when Oedipus comes to realize in his present the truths known by the audience and Apollo from the start. The stakes are high, both for Oedipus and for the entire cosmos: as the chorus sing, if the oracles are not proven true, why should they dance in honour of the gods? (τί δεῖ με χορεύειν; 888–910). The ironic structure of the play risks casting an ironic light upon the oracles of Apollo and even upon Zeus himself: if he says one thing and means another, the cosmic order he guarantees can no longer be trusted.

Lysias 1 is pervaded by the same tragic irony as the *OT*. This may seem like comparing the ridiculous to the sublime, and I concede that the cosmic significance of Euphiletus' story is not quite so grand as that of Oedipus. But the temporal structure of its irony is strikingly similar. At first 'left behind by his woes' (as he puts it, ἐμοῦ πολὺ ἀπολελειμμένου τῶν ἐμαυτοῦ κακῶν, **15**) Euphiletus gradually catches up to them over the course of the *diēgēsis*. The temporality of ignorance and that of knowledge, which are originally held in ironic antinomy, merge through a series of dramatic episodes that roughly parallel the dramatic structure of Sophocles' play: the early scene of the protagonist's home life, confident in his knowledge and control of the situation; the meeting with an old woman who – like a prophetic Tiresias – intimates an incredible truth (**15**); the interrogation of the slave girl (**18**, reminiscent of Oedipus' interrogation of the shepherd), whose confession supplies the missing pieces of the puzzle.

Slowly the ironic distance between the two temporal perspectives contracts as Euphiletus the naive husband of the *diēgēsis* merges with the disenchanted defendant of the trial. The episodes leading to Euphiletus' *anagnōrisis* are presented in markedly forensic diction. The old woman, the slave of Eratosthenes' jilted lover, speaks the language of the courts: don't think I'm approaching you out of *polupragmosunē*, she says, using a term that evokes the legal meddling of a sycophant; Eratosthenes has committed *hubris* against you and your wife – precisely the claim of this speech – and if you subject your slave girl to judicial

interrogation under torture (βασανίσῃς) you will learn everything (**16**). The girl seems to escape this wretched fate,[7] but Euphiletus' private questioning of her is likewise framed in forensic terms, with prosecution (κατηγόρει, **20**), explication (διηγήσατο, **21**) and the evidence of a red-handed arrest (ἐπ' αὐτοφώρῳ, τὸ ἔργον φανερὸν, **21**).[8] Forensic time punctures the innocence of narrative time with its oracular anticipation of the trial to come.

The two temporalities finally come together in the simultaneous recognition and reversal of the murder scene. 'After this, four or five days passed, as I will prove to you with solid evidence. But first I want to narrate what happened on the final day' (καὶ μετὰ ταῦτα διεγένοντο ἡμέραι τέτταρες ἢ πέντε, ὡς ἐγὼ μεγάλοις ὑμῖν τεκμηρίοις ἐπιδείξω. πρῶτον δὲ διηγήσασθαι βούλομαι τὰ πραχθέντα τῇ τελευταίᾳ ἡμέρᾳ, **22**).[9] Here the narrative past (καὶ μετὰ ταῦτα) comes into sudden confrontation with the forensic present (τεκμηρίοις) to tell the prospective account (διηγήσασθαι) of a day that can only retrospectively be identified as final (τῇ τελευταίᾳ ἡμέρᾳ).

The scene in the bedroom unfolds in both temporalities at once:

> ἐγὼ δ', ὦ ἄνδρες, πατάξας καταβάλλω αὐτόν, καὶ τὼ χεῖρε περιαγαγὼν εἰς τοὔπισθεν καὶ δήσας ἠρώτων διὰ τί ὑβρίζει εἰς τὴν οἰκίαν τὴν ἐμὴν εἰσιών. κἀκεῖνος ἀδικεῖν μὲν ὡμολόγει, ἠντεβόλει δὲ καὶ ἱκέτευε μὴ ἀποκτεῖναι ἀλλ' ἀργύριον πράξασθαι. ἐγὼ δ' εἶπον ὅτι «οὐκ ἐγώ σε ἀποκτενῶ, ἀλλ' ὁ τῆς πόλεως νόμος, ὃν σὺ παραβαίνων περὶ ἐλάττονος τῶν ἡδονῶν ἐποιήσω, καὶ μᾶλλον εἵλου τοιοῦτον ἁμάρτημα ἐξαμαρτάνειν εἰς τὴν γυναῖκα τὴν ἐμὴν καὶ εἰς τοὺς παῖδας τοὺς ἐμοὺς ἢ τοῖς νόμοις πείθεσθαι καὶ κόσμιος εἶναι». οὕτως, ὦ ἄνδρες, ἐκεῖνος τούτων ἔτυχεν ὥνπερ οἱ νόμοι κελεύουσι τοὺς τὰ τοιαῦτα πράττοντας.
>
> Gentlemen, I struck him and knocked him down. I tied his hands behind him and asked him why he was violating my home by entering it. He admitted his guilt and begged and beseeched me not to kill him, but to accept monetary compensation instead. And I said, "It is not I who will kill you, but the law of the city, the law you transgressed and ranked behind your own pleasure. You chose to commit this crime against my wife and my children rather than to obey the laws and behave decently". And so, gentlemen, he got what the laws command for those who do such things.
>
> (25–7)

The bedroom becomes a courtroom, as Euphiletus, his witnesses gathered around him, grabs and binds the naked Eratosthenes and delivers his speech for the prosecution. The entire legal procedure is condensed into a single instant: we get the arrest, the charge of *hubris*, the admission of guilt, the negotiation of penalty and the law's verdict – death – with its immediate and legitimate execution. Euphiletus is at once the protagonist within the narrative and the agent of the law. The two temporalities converge in his upraised sword.

For all the *enargeia* of the narrative and the promise of comprehensiveness, we never actually see the murder of Eratosthenes. In its place we get Euphiletus' speech: 'It is not I who will kill you, but the law of the city …'. This inset speech, with its rhetorical tropes of personification, antithesis, amplification, and *figura etymologica* and its forensic language of *nomos*, *hubris*, *adikia* and *hamartia*, is a courtroom speech. In fact, it is *this* courtroom speech: instead of the murder of Eratosthenes we get *On the Murder of Eratosthenes*. Ironic distance is closed as the narrative past and forensic present collapse into one, and the murder becomes its own trial.

In this *peripeteia*, as in the *OT*, the stakes are high: maybe not the entire order of the cosmos, but the timeless presence of the law. 'And so, gentlemen', Euphiletus concludes, 'Eratosthenes got what the laws command for those who do such things' (**27**). With this, he shifts into the here-and-now of the courtroom and the eternity of the law. He has the law on adultery read aloud, and then Draco's law on homicide. This law is ancestral (πάτριον, **30**) but still has authority today. Like the venerable nomothete who wrote it, the *stēlē* on which it is carved and the Areopagus that upholds it, this law belongs to both past and present. Simultaneously archaic and contemporary, it preserves the intent of the original nomothete, who (Euphiletus theorizes) felt so strongly that the murderer of an adulterer should be exempt from homicide charges, that he made this same exemption hold good in the case of concubines as well (**31**). The 'lawmaker' is a fiction Athenian forensic orators evoke to present the law as coherent, consistent and eternal.[10] Here the gesture is doubly conservative; as Christopher Carey notes, the concubine clause seems to be an atavism of the seventh century, when Draco framed the law and children of concubines had inheritance rights that they no longer held in Lysias' day.[11] Time has passed, but the lawmaker's original meaning is still inscribed, unchanging, in the marble of law. This is the law that Euphiletus cites at the beginning of his case as universal and eternal, recognized by all Greeks under all regimes, ubiquitous across time and space (**2–3**). It is this law that is at stake in Euphiletus' trial: if they do not acquit him, Euphiletus concludes, why even bother to keep this law on the books? (**48**) – Lysias' version of Sophocles' despairing τί δεῖ με χορεύειν;

Resting on the lawmaker's wisdom and the eternal authority of the law, the ironies of Lysias 1, like those of the *OT*, are what Wayne Booth (1974) calls 'stable irony'. Stable irony presupposes a real meaning, fixed and discernible, behind the ironic statement. Such ironies depend on superior knowledge. In the *OT* that superior knowledge lies with the gods: Oedipus may think he has escaped his destiny but Apollo knows better, and his divine omniscience undergirds the play's ironies, which are resolved when Oedipus comes to know the truths Apollo knows. Likewise, the ironies of Lysias 1 work only because the jurors know all along what the protagonist will come in time to realize. In fact, their superior knowledge is what allows him to present himself as ignorant: in order to appreciate his gullibility, they must know that there is something he doesn't know. Where he sees only a happy marriage, they, like a tragic chorus, see the dark truth hidden behind the palace facade.

In tragedy, this ironic knowledge manifests as dread and foreboding. In Lysias 1, it takes the form of suspicion. Suspicion is the affective expression of the text's ironic dual temporality, the sense of a deeper meaning beneath the surface that will emerge with time. This sense is cognitive, but it is also something more diffuse and intangible, an affect, a quasi-physical sensation. In this affective form, irony becomes more than just a rhetorical structure and a temporal structure; it becomes (in Raymond Williams' famous phrase) a 'structure of feeling' and a pervasive disposition towards the world.[12]

Consider the well-known architectural digression at **9–10**:

> Πρῶτον μὲν οὖν, ὦ ἄνδρες, (δεῖ γὰρ καὶ ταῦθ' ὑμῖν διηγήσασθαι) οἰκίδιον ἔστι μοι διπλοῦν, ἴσα ἔχον τὰ ἄνω τοῖς κάτω κατὰ τὴν γυναικωνῖτιν καὶ κατὰ τὴν ἀνδρωνῖτιν. ἐπειδὴ δὲ τὸ παιδίον ἐγένετο ἡμῖν, ἡ μήτηρ αὐτὸ ἐθήλαζεν· ἵνα δὲ μή, ὁπότε λοῦσθαι δέοι, κινδυνεύῃ κατὰ τῆς κλίμακος καταβαίνουσα, ἐγὼ μὲν ἄνω διῃτώμην, αἱ δὲ γυναῖκες κάτω. καὶ οὕτως ἤδη συνειθισμένον ἦν, ὥστε πολλάκις ἡ γυνὴ ἀπῄει κάτω καθευδήσουσα ὡς τὸ παιδίον, ἵνα τὸν τιτθὸν αὐτῷ διδῷ καὶ μὴ βοᾷ. καὶ ταῦτα πολὺν χρόνον οὕτως ἐγίγνετο, καὶ ἐγὼ οὐδέποτε ὑπώπτευσα, ἀλλ' οὕτως ἠλιθίως διεκείμην, ὥστε ᾤμην τὴν ἐμαυτοῦ γυναῖκα πασῶν σωφρονεστάτην εἶναι τῶν ἐν τῇ πόλει.
>
> First, gentlemen, – for I have to describe this to you – my house has two stories, the same size upstairs as downstairs, for the women's quarters and the men's quarters. When my child was born, its mother was nursing it and so that she wouldn't have to risk going down the stairs whenever she had to bathe it, I moved upstairs and the women downstairs. By now we were so used to the situation that my wife often went out to sleep downstairs with the baby so she could nurse it and it would stop crying. Things went on like this for a long time, and I never suspected anything, but I was such a fool that I thought my wife was the most virtuous of all the women in the city.

Euphiletus interrupts the narrative to describe the layout of his house. He marks the interruption with an apology, 'for I have to describe this to you' (διηγήσασθαι): the apparent digression is a necessary part of the *diēgēsis*. He goes on to explain how the space of his two-storey house was inverted after the birth of his child: the women's quarters, previously upstairs, were moved downstairs so his wife could more conveniently tend the baby in the night – with the unintended consequence, as he later discovers, that she could also more conveniently entertain her lover. These domestic details contribute to the speech's *enargeia* and to the presentation of Euphiletus as a thoughtful and trusting husband. But the digression also does something more. It engenders a feeling of domestic contentment and homeyness – *Heimlichkeit*. The οἰκίδιον (a cozy diminutive) is double (διπλοῦν); the two parts stand in equilibrium (ἴσα), like male and female. The sentence has the same equilibrium: note the isometry of τὰ ἄνω/τοῖς κάτω, and the

balance and rhyme of κατὰ τὴν γυναικωνῖτιν/κατὰ τὴν ἀνδρωνῖτιν. Even when the layout is inverted, balance is preserved: men upstairs, women down.

The structure of the house is a spatial instantiation of the harmony of Euphiletus' marriage in these early days. Lysias not only tells the jurors about that happy period; drawing on their own embodied experience of domestic space he makes them feel it.[13] But even as they do, they know that something lurks behind this domestic facade. They know this because they are sitting in a murder trial and have just listened to another speech in which this very house was no doubt represented as the site of entrapment. So even as they experience the balance and harmony of Euphiletus' *oikidion*, they also have a sensation of doubleness that renders this homey scene its uncanny opposite, *unheimlich*.[14]

The house itself is thus ironic. The jurors experience this irony affectively in the form of suspicion (*hupopsia*). 'Things were like this for a long time and I never suspected', says Euphiletus. He doesn't have to suspect, because the jurors do it for him. This sentence illustrates the speech's temporal irony, as the innocent progression of narrative time meets the hindsight of forensic time. The jurors stand with a foot in each as they watch the credulous Euphiletus not yet feel the suspicion they already feel and know that he will come to feel soon (**17**). Their suspicion is thus the affective manifestation of the narrative's dual temporality, of seeing things both in the present tense and in canny retrospect. Or we could put it the other way around: this doubleness is the temporality of suspicion, which is suspicious, above all, that things will turn out to mean the opposite of what they seem to mean – that things will turn out ironically.[15]

The jurors thus experience affectively the temporal and rhetorical doubleness that structures Euphiletus' *diēgēsis*. The jurors' own affect in turn sustains that ironic structure. Euphiletus can be 'not suspicious' (**10, 13**; cf. **15**) precisely because the jurors *are* suspicious. When he sees his wife's made-up face, he can pass over the odd detail in silence (as he says, **14**) because the jurors already suspect what it really means. Likewise, when the door sounds in the night, he can accept his wife's explanation with a bland 'I figured things were as she said' (**14**) because the jurors know full well that they aren't. Their suspicion supports his characterization: Euphiletus appears gullible only in the light of their mistrust. *Hupopsia* thus stabilizes the text's ironies: it is certain that nothing means just what it says and that it can discern the sinister truth beneath surface appearances.

The speech thus requires a suspicious outlook and works to instil one. But a hermeneutics of suspicion (as Eve Sedgwick notes) easily metathesizes into paranoia – and if they're out to get you, you can never be too paranoid.[16] Likewise, ironies can never really be stabilized, as Paul DeMan (1996) has shown, because once you recognize that things can mean their opposite, how can you ever be sure you have reached their 'real' meaning? Even Wayne Booth acknowledges that 'an ironic temper can dissolve everything, in an infinite chain of solvents'.[17] If that cozy *oikidion* wasn't what it seemed, if 'the most virtuous wife of all' wasn't what

she seemed, how can a juror be sure that Euphiletus himself is what he seems, or be confident that the truth isn't, ironically, the opposite of what he claims?

Irony has a particularly corrosive effect on *ēthos*, because, as DeMan says, it 'splits the subject into an empirical self that exists in a state of inauthenticity and a self that exists only in the form of a language that asserts the knowledge of this inauthenticity'.[18] Euphiletus' case rests largely on the persuasiveness of his simple, honest persona, and he constructs that persona, as we've seen, through the ironic temporality of his narrative: with the cynicism of hindsight, he can see that he was, at the time of the event, a gullible though well-meaning fool. But that ironic self-division risks undermining the simplicity of his character and rendering both selves – past and present – cynical and inauthentic. In the final sections of the speech Euphiletus presents a series of *eikos* arguments (arguments from probability) to prove that he didn't kill by premeditation but 'not knowing any of the things that would happen on that night' (**42**). He goes back through the events of the *diēgēsis*, subjecting them to the scrutiny of logic. My opponents say I entrapped Eratosthenes, but if I were planning to entrap him, isn't it likely that I would have rounded up potential witnesses beforehand – or at least ascertained if my friends were at home – instead of waiting till I discovered him in bed with my wife and then gathering a posse? (**41**). In the course of denying its probability, Euphiletus admits the possibility of an elaborate frame-job, for a Euphiletus who knows that gathering friends at the last minute makes his deed look unpremeditated could have used that knowledge deliberately to stage the scene as unpremeditated.[19] The hermeneutics of *hupopsia* he has encouraged the jurors to adopt will teach them how to see other likelihoods beneath his logic. As Euphiletus looks back with irony on his former credulous self, his arguments about the improbability of his guilt intimate their opposite, and the superior knowledge of the cynical defendant insinuates itself – ironically – back into the simple story of a simple man.

So his ironic strategy ironizes Euphiletus himself – quite literally: it shows him to be an *eirōn*, pretending to know less than he really knows. Not even for Socrates, the greatest *eirōn* of all, was this a winning legal strategy. Once we peer suspiciously under the surface, an abyss of ironies opens before us. For instance, how could a man as humble as Euphiletus claims to be afford the services of Lysias, one of the most prominent logographers of his day? Who is this serial-seducer Eratosthenes? Is he Eratosthenes the henchman of the Thirty (whom Lysias himself prosecutes in his twelfth oration) or is he some ironic doppelgänger? And what are we to make of the names of these two characters – 'Well-loved' and 'Strong in love' – which seem to fit the plot so suspiciously well? One irony reveals another, and the entire speech – as Porter proposes – comes to look rather suspect: maybe this is just an ironic imitation of a court case.[20]

Finally, the speech's irony risks ironizing the law itself. The narrative's double temporality, I suggested earlier, supports the timelessness of the law, which looks back over the past with retrospective omniscience but is also present at every

moment, including in the marital bedroom at the very moment of the murder. This timeless law, the mythic law-maker's intent inscribed for all time in stone, is the ultimate knowledge that stabilizes the speech's ironies. 'This is the reason all cities establish laws', says Euphiletus in the exordium, 'so that when we are in *aporia* (ἀπορῶμεν) concerning our affairs, coming up to the laws we can see what we must do' (**35**). Like Oedipus consulting Apollo's oracle, we mortals look to the law to lead us, in our tragic *aporia*, from ignorance to knowledge. The law's truth lies behind all its criminal negations and is proven infallible, ultimately, in the trial. But that truth itself risks ironic self-negation. For if the jurors should fail to acquit him, Euphiletus warns, they will be granting such licence to adultery that in the future even burglars will claim to be adulterers, knowing they will go free (**36**). In that case, he says,

> it would be better to erase the existing laws and establish new ones which will impose penalties on men who protect their own wives and grant immunity to those who try to corrupt them. That would be much more just than for citizens to be entrapped by the laws, which command a man who catches an adulterer to do with him as he pleases, while the trials turn out far worse for the victims than for those who break the law and corrupt other men's wives. I am now on trial for my life and property and everything else, all because I obeyed the laws of the city! (48–50)

The tone of this irony is darkly comic, but the consequences tragic. If the law is not enforced it will come to mean its opposite: ironically, it will punish not criminals but their victims, starting (he plaintively concludes) with Euphiletus himself.

Lysias 1 offers a paradigmatic example of the temporal complexities of narrative in general, a temporal doubleness that is ironic in its structure and suspicious in its affect. This narrative reveals the same temporal, rhetorical and affective doubleness within the trial as well, inasmuch as the trial must try to read the truth behind events, must judge situations where appearances conceal their opposite, where speakers say one thing and mean another. Irony is to that extent a necessary part of forensic rhetoric, and the hermeneutics of the lawcourt are inevitably a hermeneutics of suspicion. Yet that ironic strategy, once set in motion, is difficult to control. Because we do not know the verdict in this case, we don't know how the story ends, and can't say whether the speaker's strategy of tragic irony turned out, for him, ironically tragic. But we might note one final meta-irony. Intellectual historians have proposed that irony in the modern sense originated with Lysias' contemporary, Socrates.[21] Against the sophists and logographers who claimed that everything was just rhetoric, Socrates used irony to lead his interlocutors to a stable truth beyond all rhetorical negation. What if Lysias 1 really was an ironic dissimulation of a court case, a sophist's study of the temporal, rhetorical and affective dimensions of irony and their instabilities? While one should, no doubt, be suspicious of such a hypothesis, the subsequent revision of the history of rhetoric would prove, in retrospect, ironic indeed.

Notes

1 Ricoeur (1991a: 99): 'narrativity is the mode of discourse through which the mode of being which we call temporality, or temporal being, is brought to language'. The temporalities of narrative and their relation to the phenomenal experience of time have been extensively analyzed by Ricoeur: see (1991a and b) and, especially, his monumental *Time and Narrative* (1984–88).
2 Carey (1989: 66); Edwards (1999: 67); Todd (2007: 50–2, 93). On *enargeia* in oratory see Webb (2009: 87–106) and, in reference to Lysias 1, her contribution to this volume.
3 On forensic orators' use of visual description to bridge the gap between the speaker's past and the jurors' present, see O'Connell (2017: ch. 6), and cf. O'Connell's chapter in this volume.
4 Compare Theophrastus' *eirōn*, who is a hypocrite if not an out-and-out liar: *Char*. 1, with Diggle (2004: 166–80).
5 On this speech's ironies (with further bibliography) see Wohl (2010: 188–97).
6 Well analyzed by Vernant (1978). On Sophoclean irony and its modern history see Goldhill (2012: 13–37, 252–6); cf. Rosenmeyer (1996).
7 Carey (1989: 63, 82) notes the oddity of this omission; cf. Edwards (1999: 61).
8 Cf. Todd (2007: 113–14 and 20, 21).
9 A lacuna after πέντε was proposed by Reiske in the eighteenth century and was for a long time accepted by most scholars, but Carey's 2007 OCT prints the manuscript text. See Carey (2002); Edwards (2005); Todd (2007: 115–16 and 22). The latter text, without a lacuna, makes the passage of time itself (not any subsequent action) the object of legal demonstration, thus sharpening the juxtaposition of narrative and forensic temporalities.
10 Johnstone (1999: 25–33).
11 Carey (1989: 78-9 and 31).
12 Williams (1977: 128–35). See Hutcheon (1994: 37–56) on irony's affective 'edge'.
13 On the house as the experiential foundation of broader social abstractions, see Bourdieu (1990: 271–83).
14 I am alluding, of course, to Freud's notion of the uncanny (*unheimlich*): Freud (1958 [1919]). Cf. Porter (1997: 426): Lysias' domestic digression presents 'a seemingly innocent surface that conceals an uncertain substratum'. This digression is an example of what Fredric Jameson (2013) terms the 'affective present', and juxtaposes to the preterite temporality of realist narrative.
15 In fact, the phrase 'I never suspected' is permeated with irony. It is temporally ironic, for one can only say 'I never suspected' with the sorry hindsight of suspicions proven true. It is performatively ironic, producing in a listener precisely the suspicion it explicitly denies. It is also semantically ironic, since the very word *hupopteuō* sees (*opteuein*) another, different meaning under (*hupo*) surface appearances.
16 Sedgwick (2003: 123–51).
17 Booth (1974: 59 n. 14). Cf. 240–45, 253–77 for Booth's vision of 'unstable' ironies and their consequence: the loss of all meaning or possibility of interpretation.
18 DeMan (1971: 214).
19 Cf. Wohl (2010: 143–5).
20 Porter (1997: 433–48), contested by Todd (2007: 56–60).
21 Vlastos (1991: 21–44); cf. Colebrook (2004: 22–46).

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Chapter 12

Narrative and emotions in Pseudo-Demosthenes 47, *Against Euergus and Mnesiboulus*

Nick Fisher

Prelude

This chapter analyzes Pseudo-Demosthenes 47, *Against Euergus and Mnesiboulus*, a prosecution speech by an unnamed speaker on a charge of false witnessing in an assault case. This speech relies heavily on lengthy, vivid and powerful narratives of complex series of events, leading up to, and following on from, a trial at which the alleged false testimony was presented. These narratives have been held to be excessively long and at times irrelevant to the issues of the case. In this respect, as well as in many narratological and stylistic elements, for example, the use of direct speech and a taste for long, paratactic, sentences, this speech closely resembles the surviving speeches in the Demosthenic corpus which were delivered, and almost certainly composed, by Apollodorus, the son of Pasion. It is argued that it is very likely that Apollodorus contributed much to the composition of this speech (but unlikely that he was himself the litigant). Of its 82 paragraphs, 53 (c. 65 %) offer narratives of the dispute over naval equipment, the resulting hearings and lawsuits, and the attempts at collecting property from opponents' houses, a proportion of narrative only exceeded by Apollodorus' prosecution of Polykles (Ps.-Dem. 50). The speech makes a virtue of this strategy, promising to give a complete account of the events, and stating that the larger part of the speech will be concerned thereby to reveal his opponents' dreadful characters rather than to prove their guilt on the charge. The chapter assesses the effectiveness of the appeals to the jury's pity and anger made by the representations of the social values and ideologies of the speaker and his opponents, in relation to issues of honesty and respect as opposed to cunning and greed, the duties of trierarchs, and the use of violence in the recovery of property. The narratives are shown to vary in their degrees of detail, their vividness and their use of narrative techniques of focalization and ellipsis (e.g., of time and space); they work more by allowing the narratives to speak for themselves than by piling up chains of vituperative language. The most affecting narrative comes at the end (the raid on the farmhouse, the noble speech of the speaker's wife and the brutal death of his elderly nurse) and this leads effectively to an explicit appeal to the jury to express their anger at the brutality and disgusting acts of his opponents.

Introduction

The speech against Euergus and Mnesiboulus has not had a good press. Generally, and rightly, regarded as not good enough for Demosthenes, but possibly appropriate for Apollodorus, its presentation of the main legal issues, concerned with the false-witness charge and the failure to get Theophemus' slave woman judicially tortured, is said to be obscure and repetitive, and its structure is widely held to be confused. In so far as the speech gains praise, it is for its narratives and their emotional appeals for pity for the speaker and his people and anger at his opponents; but these too incur some criticism for length, repetition, clumsiness and irrelevance. But there were good reasons for the strategies adopted, and the narratives have their strengths.

I start with brief observations on the people and the issues. It seems certain that Demosthenes had no involvement as logographer, and there are very good grounds for suspecting that Apollodorus the son of Pasion did.[1] The characteristics of structure, argumentation and style of the speech find many parallels in the speeches which Apollodorus delivered in his own person, and it would most easily explain how it got published as part of Demosthenes' corpus, if it was attached to the other Apollodoran speeches which somehow got into the collection as a group.[2] The speech concerns an escalating dispute over naval equipment between trierarchs c. 357–354, while Apollodorus was operating as a trierarch during the 360s and 350s; he was syntrierarch with Menon in 356/5 on the ship *Phosphoros* (*IG* II^2 1612, 105), and had been previously involved in many disputes over the equipping and running of a ship a few years earlier, as well as many other cases (362–0; Ps.-Dem. 50 *passim*).

The standard view is that Apollodorus could not himself be the trierarch who delivered this speech, because this trierarch has a young son (the person who was nearly carried off as if he were a slave, and was unable himself to assert his freedom, **61**), whereas we hear that Apollodorus fathered only daughters, not sons. Douglas MacDowell has challenged this.[3] His main argument is that in the Neaera speech Theomnestus uses the masculine articles (*hoi paides*, *tas paidas*) of Apollodorus' children, though he only gives details of one daughter he had married and another daughter who was as yet unmarried (Ps.-Dem. 59.2, 6, 7–8). He concludes that Apollodorus might well have been the speaker, embroiled in another long-running dispute with a trierarch clinging onto equipment.[4]

Three Apollodoran speeches mention his children. First, at Ps.-Dem. 50.62 (c. 360), Apollodorus referred to his children (*paidia*) as 'small'; a decade or so later, Demosthenes, writing for Apollodorus, excited pity for his two daughters who would be poor and unmarriageable with no dowries if he lost his property (Dem. 45 *Against Stephanus*, 54, 74, 85); and in the Neaira trial in the later 340s, Theomnestus excited pity for Apollodorus, calling them *paides* with masculine articles, but specifying these same two daughters (Ps.-Dem. 59.2, 8). But it seems highly unlikely that Theomnestus in these circumstances would mention the two daughters, one of them his wife, the other the unmarried daughter, but not mention a son, if one was still living; it seems even less likely that three times in one

speech, Demosthenes, writing for Apollodorus, would excite sympathy for his daughters but not his son, if there were one still alive (Dem. 45.54, 74, 85).[5] One can, on the other hand, easily suppose that a Greek might conventionally use the masculine articles when talking in general of someone's children, even when he goes on immediately to reveal that there were in fact only daughters.[6]

It remains very likely, perhaps certain, that Apollodorus made major contributions to the case and the speech. As MacDowell pointed out, the speaker, like Apollodorus, was an enthusiastic liturgist who provided his own equipment because he wanted to avoid trouble with the overseers of the dockyards (**23**), and seems to have had problems getting on with others; he admits he had suffered in previous legal cases (**39**). The two very likely knew each other, as they were trierarchs at the same time, possibly served on the same expeditions and adopted similar policies on providing their own equipment; conceivably they felt a bond as suffering comparable prejudice from unpleasant fellow-liturgists like Theophemus and Polycles, who were supported by their many friends (**44**; cf. Ps.-Dem. 50). One might suppose that the resulting speech was something of a joint collaboration, in which Apollodorus gave very substantial advice on strategy and drafting to his friend, along one of the various models adumbrated many years ago in Dover's *Lysias and the* Corpus Lysiacum (1968).

Of his opponents, Theophemus was a liturgist for whom three trierarchies are attested. His first was on *Dia*, before 357/6; some equipment is listed as owing and returned in *IG* II^2 1611, 400–10. His second trierarchy, the foundation of this case, was performed jointly with Democharés, on *Euphues*, and this is attested on a naval list recording his repayment of his equipment debts (*IG* II^2 1612, 315–6). He is then recorded as having been part of a naval symmory of six, on *Kekropis Epigenous* (*IG* II^2 1622, 611–22; some time before 342/1). So he evidently survived both his various repayments and his legal disputes with the speaker without losing his wealth or his preparedness to perform some liturgical activity.[7] His brother Euergus, the actual target of the current *dikē pseudomartyriōn*,[8] was perhaps the younger; he was living in the same house as his father, after the property had been divided in two, and seemed ready to follow his brother's lead. He may well also be the rich and somewhat shady character who played a part in the dispute over mining leases which led to the case for which Demosthenes' *Against Pantainetus* (37) was composed.[9] So if he lost this false witness case, whatever fine may have been imposed did not ruin him.[10] Theophemus was not yet married (**38**), so the third in the trio, Mnesiboulus, described as Theophemus' *kēdestēs* (**9**), must be his brother-in-law, as most translators assume.[11] There is no attempt to present the enemies as excessively rich in contrast to a poorer victim who identifies himself with ordinary citizens, along the lines adopted by Demosthenes' speech *Against Meidias* (Dem. 21). Rather, the speaker emphasizes the clash between a law-abiding and scrupulous liturgist wanting to do promptly what the laws and officials command, and a family group of devious, money-grubbing and ruthless villains exploiting all legal and illegal opportunities to avoid their obligations and cause grief to others.[12]

The preponderance of narrative

The structure of the speech has been criticized on many grounds: that it contains too great a proportion of narrative over argumentation and in general is prolix and repetitive; that the narrative is delayed until after the main proofs; that the proofs are repetitive and obscure; and that much of the narrative is irrelevant to the issues of the witnesses' lying at the *aikeia* trial, as it details events following the trials.[13] There is a two-stage narrative:[14] the first covers events before and up to the *aikeia* trial (29 chapters, **18–46**) and the second gives extended treatment of the events after the verdict (25 chapters, **49–73**). Together they constitute c. 66% (54 chapters) of the total 82 chapters, compared with the c. 34% (28 chapters) constituted by the introduction and initial argument on the witness issue (**1–17**, 17 chapters), a brief transitional argument (**47–8**, 2 chapters), and the final arguments, recapitulations and conclusion (**74–82**, 9 chapters). A heavy preponderance of narrative over argumentation is characteristic of Apollodorus' speeches. According to Trevett's calculations (1992, 84–5), the proportion of narrative in a sample of five Demosthenic speeches is 14.6%, whereas for the Apollodoran speeches (excluding 46) it is 54.4% (see also Table12.1).[15] Ps.-Dem. 50 *Against Polycles*, a speech on a very similar topic, has the heaviest proportion of narrative, containing perhaps up to c. 75% of detailed narratives of events involving the trierarchs, mostly away from Athens, often interspersed with arguments, with only a brief introduction and a longer conclusion.[16] Ps.-Dem. 50 also includes many direct speeches, both Apollodorus' own and those of others.[17]

In our speech this preponderance of narrative should be defended as the most effective strategy available. The main problem was that the previous jury in Theophemus' prosecution over the fight had found for him, despite the speaker's legitimate reasons for seeking to acquire assets in settlement of the dispute over the equipment, and his having some citizen witnesses to the fight as well as the slave woman (**38, 40**).[18] Perhaps Theophemus had come off worse in the fight (despite the speaker's being able to show the *boulē* the effects of his blows, **41**); it was certain that the speaker had invaded Theophemus' house, after his attempt to carry the woman away was blocked, and could be held to have intruded wrongly as he admits at the end (**79–80**). The *aikeia* case hinged as usual on who started the fight and perhaps where exactly it took place, and for that witnesses must have been crucial. The speaker claims that he sent the state slave to collect citizen witnesses from the street, and before entering the house he called on those present to give witness; later these testimonies were read (**40**).[19] But the speaker admits that the original jury put most weight on the failed challenge to produce the slave woman, believing that Theophemus had offered the challenge in good faith and blaming the speaker for delaying it; he admits also that the jury disbelieved the testimony of the passers-by, accepting his opponents' argument that these witnesses had been supplied and paid by the speaker (**6–8, 46–48, 79–80**). The jury may also have taken the view that as the equipment had now been returned, and that issue settled with the imposition of a small fine on Theophemus, the speaker

Table 12.1 Percentages of narrative in Dem. 47 and some Apollodoran speeches

Speech	*Introduction*	*Narrative*	*Arguments*	*Conclusion*	*% of narrative*
Dem. 47 (Euergus & Mnesiboulus)	1–5	18–46, 49–73	6–17, 47–8, 74–80	81–2	c. 66%
Dem. 49 (Timotheus)	1–5	6–33	34–67	68–9	c. 42%
Dem. 50 (Polycles)	1–3	4–56 (with some bits of argument)		57–68	c. 75%
Dem. 52 (Callippus)	1–2	3–16	17–31	32–3	c. 42%
Dem. 53 (Nicostratus)	1–3	4–18	19–28	29	c. 52%
Dem. 59 (Neaera)	1–15, 16–17	18–48, 50–87	49, 88–125	126	c. 54%

was pushing his case too far in continuing his *aikeia* action. There seems to have been a general pattern at these times of naval crisis and shortages to avoid unnecessarily antagonizing devious and recalcitrant trierarchs and naval officials, and to accept lenient settlements provided the equipment was returned.[20]

So while there is some attempt to persuade the jury this time that Theophemus started it,[21] the arguments about the evidence of Euergus and Mnesiboulus relating to the challenge of the slave woman are handled in the rather opaque and not very well-written first seventeen chapters; it remains unclear on what specific occasions (arbitrations, or hearings, in the different trials) each side may have challenged and the other then refused, the *basanos*.[22] One may suspect here a deliberate reticence on awkward issues, an example of narratological *implicit ellipsis*.[23] Thereafter the trierarch spends most time on the two narratives.[24] He and his speechwriter must have concluded that the main hope for overturning the verdict rested on a fresh narrative detailing subsequent events and providing new witnesses, and providing new reasons to appeal to the jury's judgement of their relative characters, moral worth and political goodwill.[25]

This strategy is made explicit both at the start (**4**) and at the end (**81**–**2**); it is expressly stated (an example of *meta-narrative*) that it is the characters of his opponents which counts, and it is truthful narratives which are needed to reveal this.

> Νῦν δὲ πλείων μοι λόγος ἔσται ἐξελέγχοντι τὸν τρόπον αὐτῶν ἢ τὴν μαρτυρίαν ψευδῆ οὖσαν. περὶ μὲν γὰρ τῆς μαρτυρίας, ὅτι ψευδῆ μεμαρτυρήκασιν, αὐτοί μοι δοκοῦσιν ἔργῳ ἐξελέγχειν αὐτήν, καὶ οὐκ ἄλλους με δεῖ μάρτυρας παρασχέσθαι ἢ αὐτοὺς τούτους.
>
> (4)

> So a larger part of my speech will be where I demonstrate the character of these men, rather than that their testimony was false. After all, on the deposition, that they gave false witness they seem themselves to have proved by their acts, and I have no need to produce any witnesses other than the men themselves.

It is the character of his opponents which demonstrates that it was they who refused to surrender the woman, and gave false witness, to conceal their wrongdoing.[26] The purpose throughout the narratives is to build two clear and consistent contrasts: one between the law-abiding speaker prepared to perform trierarchies and spend lavishly out of *philotimia*, and his devious, money-grubbing and ruthless opponents; and the second between the scrupulousness of the speaker (and his neighbours) in relation to the sanctity of the citizen's house and his female relatives and the total contempt for all that shown by the villains.[27] This is summed up in the conclusion, where he describes himself as mild (*praos*) in relation to them, while they were brutal and disgusting (*aselgeis* and *bdelyroi*), in relation to entering opponents' houses and recovering goods (**81**). At the very end, he throws in some extra depositions which he has read out detailing further crimes allegedly committed by his opponents; such a manoeuvre, arguably a bit clumsy, is also found in the undoubtedly Apollodoran Ps.-Dem. 50.68.[28]

Narrative part one, 18–46: the conflict, the fight and the first trial

I propose now to look in rather more detail at the two stages of the narrative, to explore the important themes and narratological methods used to persuade the jury of the contrasting characters of the participants. In the first-stage narrative of the contacts between the speaker and Theophemus, there is little attempt at visualization, scene-setting or detailed description, but a clear emphasis on the moral contrast in attitudes and motivations. In the second stage, the narrative of the subsequent raids on the speaker's house and its members is more vivid, has more direct speech and varied focalization; it has the greater explicit arousal of the emotions of anger and disgust, and leads smoothly to the emotionally powerful conclusion.

Compulsion, duty and moderation

The first half, describing the attempts made by the speaker to recover naval equipment owed by Theophemus and Democharés, reveals (as do the surviving naval lists) how the state was desperately developing new mechanisms to keep as many ships equipped for service as possible. In 357/6 a number of new measures were instituted by Periandrus' law (mentioned in **21**) creating naval symmories, and some secondary decrees.[29] These measures put pressure

on the new symmories and the trierarchs to be more proactive in recovering the goods from predecessors; the overseers of the dockyards (ἐπιμεληταὶ τῶν νεωρίων) and the *boulē* gave instructions, and the *boulē* and the courts offered supportive verdicts and encouragement, but not much practical help in terms of officials and possible witnesses, to deal with the disputes and violence, which this use of competing trierarchs as collectors was only too likely to produce. Overall the speech suggests that these measures caused considerable trouble for collecting trierarchs, and while they may have increased the amount of equipment returned, they produced little by way of punishment for recalcitrant offenders; the new system also helped to create a continuing chain of individual hatreds, violence, and lawsuits.[30] The tone of these introductory paragraphs is restrained and relatively simple. At the start of the narrative he promises (in a '*meta-narrative intervention*')[31] that he will reveal how Theophemus deceived the jury and annulled the verdicts of the *boulē*, courts and the laws: 'I shall take you through this point by point'. The narrative then starts as usual with a 'for' (γάρ).[32] The point is made first that Theophemus' unjust actions have been directed as much or more against the democratic institutions of the polis, the juries, *boulē*, courts, laws, decrees, magistracies and public inscriptions, as they were against him (**18**),[33] and that there was no previous private dispute which could give him a motive to enter his house, no business dealings or quarrel over drink or sex. Thus, he insists that he began to take action entirely following the instructions of *dēmos* and *boulē* (**19**) and reminds the jury of the serious crisis of 357/6 which produced Charidemus' decree. (**20**).[34]

As the narrative gets going (**21–5**) state pressure remains the keynote; there are no fewer than seven words indicating compulsion, necessity and orders from officials (ἠναγκάζε, προσέταττεν, ἠναγκάζε, παρέδωκεν, ἐξ ἀνάγκης, ἠναγκαζόμην, ἀναγκαζόμενος).[35] He cites, unusually in a forensic speech, the naval *stēlē* recording the debts of Theophemus and Democharis, and insists that the *epimeletai* passed their names on to him (**22**), as later when he finally gets to meet Euergus and then Theophemus, he brandishes his copy of the decree. (**34–36**).[36] He does not complain that the new measures put too much pressure on trierarchs and symmory-leaders (he was both at once), but he points out that he had to chase them up and thus risk creating enemies, against his earlier policy of using his own equipment to avoid trouble (**23**). In this he is very like Apollodorus and his colleague Hagnon ([Dem.] 50.7–9, 42), and the speaker of the Demosthenic speech *On the Trierarchic Crown* (Dem. 51.5); other similar cases appear on the navy lists.[37] But as Apollodorus in [Dem.] 50 above all makes clear, over-enthusiasm to use one's own flashy equipment could create resentment and hostility, and this may be one reason why the speaker here may have lacked support and why his difficulties may not have worried others. It seems that Theophemus had many supporters at the hearing on the penalty (**43**). As mentioned before, the speaker lays very heavy insistence on the admirable moderation of his approach and the care he took in entering the house, first establishing there were no female relatives to be offended.[38]

Management of place and time – inclusions and exclusions (implicit ellipseis*)*

The narrative is relatively summary, and he does not spend much time on the circumstances and process of the actual fight – rather more than Demosthenes in the *Meidias*, but much less than in the *Conon*. All the events in this first narrative took place in the same archon year, of Agathocles (357/6); at **44** the speaker appeals to those members of the *boulē* on the jury to confirm with their inside knowledge the final settlement reached by that body in that year.[39] There is one indication of topography. The second initial meeting with Theophemus is specified as happening at the 'Hermes by the little gate'. This gate was mentioned by Harpocration and the Suda, who both cite Philochorus:

> Philoch. *FGrH* 328 F.40a.6 = Harpokr. (Suda) s.v. πρὸς τῆι πυλίδι Ἑρμῆς· Δημοσθένης ἐν τῶι Κατ΄ Εὐέργου (47, 26). Φιλόχορος ἐν τῆι ε Ἀθηναίων φησίν ἀρξαμένων τειχίζειν τὸν Πειραιᾶ, οἱ θ ἄρχοντες τοῦτον ἀναθέντες ἐπέγραψαν·
>
> > Ἀρξάμενοι πρῶτοι τειχίζειν οἵδ΄ ἀνέθηκαν
> > βουλῆς καὶ δήμου δόγμασι πειθόμενοι.
>
> Hermes by the little gate: Demosthenes in the 'Against Euergus' (47.26). Philochorus in book 5 says that when the Athenians were beginning to fortify the Peiraeus, the nine archons dedicated this statue and added this inscription:
>
> > Beginning first to build walls these men dedicated this
> > Obedient to the decrees of the *boulē* and the *dēmos*.
>
> Suda s.v. Ἑρμῆς ὁ πρὸς τῇ πυλίδι· Φιλόχορος λέγει, ὡς θ ἄρχοντες †ταῖς φυλαῖς ἀνέθεσαν Ἑρμῆν παρὰ τὸν πυλῶνα τὸν ἄστικον.
>
> Hermes by the gate: Philochorus says, that the nine archons ?for the tribes dedicated the Hermes by the city gate.[40]

Jacoby in his commentary on *FGH* 328 F.40a.6, followed by Harding, dated this convincingly to Conon's rebuilding in 395/4, primarily because the event was dealt with in Philochorus' fifth book.[41] The gate was apparently the main City Gate (or Asty Gate) where most traffic entered or left the Peiraeus, perhaps not far from the Hippodrome and the speaker's farm.[42] But we are not told exactly where Theophemus' house was (presumably in the city), though we are told how the speaker found this out (**35**). The speaker is more seriously vague on the timescale of events and possible gaps between the hearings and actions mentioned (*ellipseis*). After two initial, unhelpful, meetings with Theophemus, there was a court hearing and convictions by the *boulē*, after which Democharés, to the speaker's surprise,

gave his share back, but Theophemus, though not contesting the claims, delayed for some length of time, hoping that the speaker would go off on campaign in the ship (using his own equipment?), and then get embroiled in a dispute with his successor. How long this took is not made clear (some months?). At some point also Theophemus allegedly tried to pin the blame on the trierarch previously in charge of *Euphues* in 358/357, Isocrates' step-son Aphareus, but had to give that up. Later, it seems (perhaps early summer 357/6), he tried putting the blame on Democharès, and went on pursuing this claim against his sons.[43] Still in 357/6, the speaker then went again to the *boulē* to complain, along with many other trierarchs – and they got a decree authorizing them to recover equipment as best they could. This led to the encounter at the house and the exchange of blows, after which the speaker returned to the *boulē*, and this time an *eisangelia* brought against Theophemus resulted in his conviction. In response to the pleadings of Theophemus and his supporters, the conviction produced merely the low fine of 25 drachmai, and the return of the equipment, with a promise from Theophemus to agree to arbitration on the issue of the blows.[44] Then the speaker finally went on campaign on his ship, but he leaves out many details: at what time of year this campaign took place and whether his trierarchy was now extended past mid-summer into the next year, 356/5; where the campaign took place, how long he was away and whether he used the original equipment or his own. It is not easy to determine the importance of all this imprecision over dates, places and circumstances, as we do not know what may have been left out, but it certainly seems more than a little suspicious.

Focalization

In this narrative, there is no direct speech, and the speaker mostly acts as the 'primary narrator', setting out decisions and events from his own perspective. But when he has to deal with Theophemus' evasions and disappearances he resorts to explicit speculation, as an 'external narrator', on Theophemus' motives when he disappeared, refused to return the equipment and kept a low profile (**28–9**). Here the speaker reconstructs his opponent's devious plan: to wait until the speaker has been out with the fleet (using his own equipment) and returned to face handing gear over to his successor, in the hope that he would give up the attempts to recover the gear from Theophemus, when faced with opponents prepared to lie solidly on oath, with supporting probability arguments, that he had already received it (**29–31**). This is all inference, not based on information from Theophemus or his side, but on their actions or lack of them.[45] He then supports this speculation with the further allegations of his manoeuvres in relation to the previous dispute with Aphareus, claiming that it had not been resolved. And even then Theophemus allegedly went on to make a further attempt to claim that he had passed it on to Democharès, who then died. Apart from this speculation on motivations, the narrative operates from the speaker's own perspective, reporting his own actions and thoughts, and his perception of others' responses, while giving his opponents' replies briefly and indirectly (e.g., **35**).

Visualization and style

There is not much detailed scene-setting. He says relatively little about the fight itself; notably he says nothing in detail on the testimony of the various witnesses but merely cites his own citizen witnesses for the fact that the other started it, while apparently conceding that the all-important witness was the woman whom he insists Theophemus would not surrender. The narrative asserts carefully that Theophemus started it:

> εἰσιόντος δέ μου παίει πὺξ ὁ Θεόφημος τὸ στόμα καὶ ἐγὼ ἐπιμαρτυράμενος τοὺς παρόντας ἠμυνάμην.
>
> As I was going in, Theophemus strikes me with a punch on the mouth, and I, calling on those present as witnesses, began to defend myself.
>
> (38)

Immediacy at this crucial moment is given by the historic present παίει.[46] He then adds that he called out for witnesses as he 'began to defend himself'.[47] He also does not say how far inside the house he had got before he was hit ('as I was going in'). Finally, he claims that he showed his bruises to the *boulē,* who concluded that it was an act of *hubris* against the state (**41**). Overall, it is a clear narrative, but very succinct and lacking in visual details and vivid speech. He insists again how he was doing what the *boulē* told him, brandishing his copy of the *psēphisma*, but Theophemus conceded nothing but uttered threats and abuse (ἠπείλει καὶ ἐλοιδορεῖτο). The whole narrative leaves a lot of questions open, and his opponents' version must have had some advantages; perhaps they were able to say more about how long the fight lasted, who got the better of it, or who suffered the more serious injuries.[48]

The style of the narrative has many features characteristic of Apollodoran speeches: long, rambling sentences, with multiple clauses connected by particles, piled on top of one another: genitive absolutes, and other participial clauses, temporal clauses and so on.[49] Section 34 is an excellent example: a long, paratactic, sentence detailing how the speaker armed with his valid *psephisma* from the *boulē* (and no *graphē paranomōn* having been lodged), approached Euergus and got a message passed on to Theophemus demanding the gear back, then left it a few days, received nothing except insults from Euergus, took witnesses and asked about familial circumstances.

Narrative part two: the raids and their consequences

This account of a brutal house raid is similar to, and perhaps modelled on, Lysias' account of the Thirty's assaults on his and his brother's houses in *Against Eratosthenes* (Lys. 12.8–20).[50] The speaker, however, chooses not to invoke explicitly the parallel of the Thirty's depredations, unlike Demosthenes' choice, in the *Against Androtion* and *Against Timokrates*, to hammer that point, arguably

with much less justification, when attacking the methods of collecting *eisphora*-arrears employed by Androtion and his colleagues.[51]

Three good reasons justify this longer narrative of the events following the verdict in the assault case won by Theophemus. It is new to a court; it reveals much more fully and unequivocally the out-and-out villainy of the three; and it demonstrates that Theophemus was not the guileless victim that he had persuaded the first jury he was. With its presentation of a story of ruthless deceit, excessive greed, and repeated acts of heartless violence and theft against the speaker's farm and household, it exposes Theophemus' hypocrisy in exploiting the ideal of the sanctity of the house when the speaker sought to recover the gear.[52] The earlier, contrasting, scrupulousness of the speaker is reinforced by the similar care shown by his supportive neighbours, in contrast to the relentless greed of the villains. At **60** the first group of 'neighbours' kept a prudent distance; these, as the text then specifies, were slaves, who sought help from citizens. The citizen neighbours are named, Hagnophilus and Hermogenes, and they also held off and did not risk physical involvement, Hagnophilus apparently because he was reluctant to enter the speaker's property, but probably also because he feared being beaten up, and did not know the rights and wrongs of the quarrel. The assailants no doubt were claiming legitimate seizure. Hermogenes' verbal intervention perhaps involved some risk, as they might have reacted badly at being told not to carry off the son. This narrative is appropriately livelier and makes a bigger impact.

Management of time and place – gaps and what may be left out

The topography is in places fairly precise, but in others vague. We are not told where the bank is or whose bank it was. An obvious possibility would be the bank which had belonged to Pasion and was being run in the 350's under a lease agreement (*misthōsis*) by Xenon and his three colleagues, while Apollodorus and Pasicles both retained strong interests.[53] Pasion's bank was in the Peiraeus, as were many other banks.[54] The speaker does not say what he was doing in the Peiraeus while the main raid took place, and the news was brought to him there (**62**); conceivably juries might have supposed that he was waiting at the bank or engaged on trierarchic business.[55] The location which is specified is the speaker's farm and farm house, which is said to be 'near the Hippodrome' (**53, 76**). As Ferguson argued,[56] the Hippodrome is best located, by the combined evidence of Stephanus of Byzantium, Xenophon and a late fifth-century votive relief, in Echelidai, a village settlement in the deme Xypete named after a supposed hero Echelos. Stephanus (*Ethnika* s.v. *Echelidai*) describes Echelidai as 'a deme in Attica, (named) after the hero Echelos, so (named) after a marsh, a place lying between Peiraeus and the shrine of Heracles Tetrakomos, at which they established athletic contests for the Panathenaia'.[57] Xenophon (*Hipparch*. 3.1) stated that the cavalry made their displays 'at the Academy, at Lukeion and at Phaleron [and] in the Hippodrome'.[58] The find spot of a votive relief displaying and mentioning Echelos and his bride Iasile, *IG* I^3 986 (= *IG* II^2 4546), 600m north of the modern

New Phaleron,[59] establishes the location of the shrine, village and Hippodrome a little to the north-east of the Peiraeus on the way to the city, between the Peiraeus walls and the Phaleron Wall. That would be convenient enough both for the bank and shipping at the Peiraeus and also for Theophemus (**76–7**), as he seems to have been living in the city (cf. **62**).[60]

The treatment of time is initially vague, and subject to *ellipsis*, as before. It is not clear in which year or years these events took place, from the first trial and the postponement of the speaker's case to the raids on the farm. Also left deliberately vague are Theophemus' grounds for a *paragraphē* and a postponement of the hearing. We cannot determine how long after the trial and adverse verdict the speaker was given to pay, before he had to ask for an extension. This occurred when he had to start a new trierarchy, commanded by the general Alcimachus Anagyrasius:[61] this could be early in the next year 355/4 (where Hansen puts it), but might be a year later, 354/3 (where Develin, equally tentatively, puts it).[62] The request for a delay in paying is then followed by the raids. His need to ask for delay is used to highlight his merely moderate wealth and his generous liturgy record, which produced financial constraints: this is reinforced when he later explains that much of his furnishing was pawned or sold, 'because of the liturgies, the *eisphorai* and my *philotimia* towards you' (**54**).[63] It may well be that the imprecision up to this point hides a period of deceit and evasiveness on the part of the speaker, giving Theophemus grounds for expecting that the speaker was (or was about to be) in default, and thus justifying the seizures.[64] After this, the events of the speaker's attempt to pay Theophemus, and his and his kinsmen's raids happen rapidly and now we are given precise intervals of days, six days in all until the woman died. Allegedly Theophemus had been waiting until the adjournment would expire and the speaker would be in default; but he had then to act suddenly as soon as the speaker told him to come and collect his money (**51, 75–6**). The speaker was informed on the day that the first raid took place; he called on Theophemus at first light next day, and dragged him off to the bank to settle his account, and meanwhile on that same day Euergus went back to take more furniture. On the sixth day after the first attack, the old woman died attended by the speaker's doctor and ignored by the perpetrators. After this, time lapses become vague again. How long he spent getting advice from the exegetes and his friends, and deciding to proceed only with a purification procedure and this *pseudomartyriōn* trial, is not made clear, though perhaps is not very important. So the speaker is precise where it suits him to be, on the chronology and sequences of the offer to pay off the fine, the raids, the actual repayment, and the illness and death of the woman; but he is suspiciously evasive on what led up to that sequence.

Embedded focalizations

For much of this narrative the speaker was absent, and hence he operates more as the external narrator, and engages in frequent embedded focalizations, both with his enemies, and more often with those on his side, his family and slaves, and

some friendly neutrals, his neighbours. Most strikingly, there is abundant reporting (or invention) of others' speeches, three powerful moments of direct speech, and one of reported speech.[65]

The first encounter presents us with Theophemus giving an apparently straight and innocent reply, in simple, direct language ('no problem; when you've sent the ship off, bring me the money' **49**). Unlike the earlier case (**28–31**), he presents a verbatim report of what he (allegedly) heard Theophemus say, which shows him to be a smooth villain who tells a barefaced lie with conviction; this example of his apparent honesty is designed to increase the jury's hatred, when they hear of the ruthless depredations which followed immediately (cf. also the recapitulation at **75**).[66]

The most powerful and effective speech comes in the heat of the action in the farmhouse, the report of the dramatic intervention of the speaker's wife: two short sentences in direct speech, and one indirect as the speaker interrupts the discourse with careful explanations of how she knew various things. She spells out in considerable detail why what is happening is unnecessary and totally wrong, and in simple language warns them of their excesses – they can easily wait to get the money from the speaker and anyway have already carried off goods of equivalent value (**57**). Perhaps unconvincingly, she is logical, dignified and coherent, and very well informed on the size of the fine and how it was ready to be paid out, and on what they have just taken from the fields.[67] All this gives a considerable immediacy and *pathos* to the scene and attributes decency and nobility to this innocent victim (and by extension to her husband). This portrait reminds us of the more extensive speech allegedly made by Diogeiton's daughter on behalf of her deprived sons, as 'reported' in Lys. 32.12–18; this may be a second case of a debt owed to a Lysias speech.[68] We hear a respectable woman, normally protected from outsiders and praised for her silence, surprisingly, and necessarily, like Diogeiton's daughter, finding a strong voice as she presents a powerful remonstrance amid the turmoil of the assault inside her farmhouse. As Edwards observes of Diogeiton's daughter's speech, this tactic enables her voice condemning her outrage to be heard, as second-hand, quasi-testimony, given that she was not permitted to act directly as a witness.[69] But she is completely and shamelessly ignored, and this is followed by the even more serious violence, fatal as it turned out, against the vulnerable old freedwoman.

There is also, as in the earlier narrative, an important reported dialogue with his enemies in **62–4**, in which allegedly Theophemus revealed his strategy of keeping on with the excess property he had amassed in order to pressure the speaker to drop all his legal actions against Theophemus and his supporting witnesses.

Finally, the advice of the *exēgētai* is given in full in a long piece of direct speech (**69–70**). The speaker no doubt thought that it gave their judgement greater authority to be reported verbatim (whether accurately or not); they appear as a dignified collective of experienced, religiously qualified and appointed, men representing (as some tragic choruses arguably do) the city's religious and legal rules and values.[70] The advice makes it clear that because of the restrictiveness of the

law he had no option but not to prosecute for the homicide, as she was neither his slave nor his kin; to do so would risk social disapproval (*phthonos*) as being over-litigious even if he succeeded, and a possible trial for perjury if he failed to get a conviction and was held to have sworn falsely that the woman was a slave or his kin. This thus protects the speaker against the criticism that if he were so angry at his enemies' violence he should have prosecuted them for homicide. Instead, with their final, succinct, quiet phrase – 'in some other way, if you like, get revenge' (ἄλλῃ δὲ εἴ πῃ βούλει, τιμωροῦ) the exegetes give encouragement and sanction to his alternative plan, to continue with his lawsuits. With their authority, and through their reported words, they seem to invite the jury to give him the first stage of his revenge by finding against his enemies. In this phrase τιμωροῦ, 'take your revenge (sc. by legal means)', primarily must have the idea of 'take just revenge for the speaker and his household', but it also contains an element of punishment inflicted or approved by the state, which will thus satisfy also the anger of the jury and the state.[71]

Visualization, vividness and style

The lively account of violence in the farmhouse and courtyard begins with a quiet scene-setting of female-dominated domesticity and kindly reciprocity, explained by the back story of the presence of the faithful old nurse, now a grateful, loyal and supportive retainer.[72] Into this the men burst and grabbed things, other slave women locked themselves in the tower in which they were living,[73] and amid all this turmoil we get suddenly the rational voice of the wife, followed by the villains' contrasting refusal to engage with the conversation, pursuing instead a silent brutality of the assault on the freedwoman, recounted with detailed, lurid descriptions of the injuries inflicted on her body.[74] This section includes many cases of the historic present, adding excitement: **52, 56** (three cases) and **62**.[75] This most dramatic part of the narrative displays two remarkable examples of very long paratactic sentences. The sentence starting in **56** (as they were lunching in the courtyard, ἀριστώντων δὲ ἐν τῇ αὐλῇ) has a genitive absolute, a ὡς = when clause on the violent action of the raiders with three verbs, a main clause with a μέν on the slaves in the tower, including a parenthesis explaining where they were and why; back to the raiders with a δέ clause on what the raiders did carry off, then a genitive absolute introducing the first snippets of speech of the wife, which switch from direct to indirect, and include another parenthetical explanation of how she knew things. After her final words, we then have an extraordinarily long sentence (**58–59**) with a whole host of clauses tacked on together, focused on the violence done to the body of the old woman. It consists of a genitive absolute, the beginning of a 'not only but also' main clause, another genitive absolute, a relative clause, a continuation of the genitive absolute, a purpose clause, a temporal clause, back to the main clause, a participle + object agreeing with the subject, the main clause again, which takes a 'they so treated her that' form (which includes a reminder to the jury who Euergus is and that he is the defendant in court), another participle, the result clause with a change of subject ('so

that her arms and wrists became bloodied'), two singular genitive participles with internal accusatives, and then a plural genitive participle, and another result clause (so she had lacerations on her throat) with a participle ('being strangled'), and a final result clause ('her chest (was) black and blue'). This is followed by a briefer sentence summing up the violence and condemning it with a strong vituperative term (εἰς τοῦτο δ΄ ἦλθον πονηρίας ὥστε, they reached such a level of *ponēria*, villainy, **59**) leaving an impression of a very extended period of ruthless strangling and hitting. These sentences seem breathless and hectic, rather than controlled, balanced or elegant, but, while arguably the paratactic style is taken too far, the section gives an impression of immediacy and engagement, of spontaneity and improvisation. This way it fits well with the precepts of the contemporary rhetorician Alcidamas, whose pamphlet *On Those Who Write Written Speeches or On Sophists* presented strong arguments in praise of spontaneity in forensic oratory.[76] In this passage in particular the speaker conveys a sense of being present at a chaotic and frightful situation, while also – somewhat pedantically – providing relevant information along the way.[77]

Conclusion: the emotions of the jury

Generally the speaker is restrained in his use of vituperative language and lets the narratives make their own impact, though there is something of an accumulation at the end. Towards the end of the first narrative he sums up the *boulē*'s strong judgement:

> ἀγανακτήσασα δ΄ ἡ βουλὴ ἐφ΄ οἷς ἐγὼ ἐπεπόνθειν, καὶ ἰδοῦσά με ὡς διεκείμην, καὶ ἡγησαμένη ὑβρίσθαι οὐκ ἐμέ ἀλλ΄ ἑαυτὴν καὶ τὸν δῆμον τὸν ψηφισάμενον καὶ τὸν νόμον τὸν ἀναγκάσαντα εἰσπράττειν τὰ σκεύη.
>
> the *boulē*, getting angry at what I had suffered and seeing my condition, and thinking that it was not I who had been treated with *hubris* but itself and the *demos* which had voted the decree and the law which had compelled him to return the equipment.
>
> (41)

Twice, one in each stage of the two narratives, we have the phrase 'he/they reached such a height of *ponēria* that …' (**28, 59**), and twice Theophemus' greed (*pleonexia*) is described as 'terrible' – first early in the first narrative (**31**), and again in the conclusion (**78**).

Explicit appeal to powerful emotions appears at its fullest in the *a fortiori* arguments of the conclusion, which deploy the sustained moral contrasts between the two sides which has been built through all the narratives. One crucial argument, which reinforces the need for the nature and length of the narrative, is built on a comparison between the emotions of the earlier jury and now, by appealing to any who had been on the previous jury to use the same moral principles which

they had used previously, to reverse their alignment in the light of the new information of the events following the trial. The different aspects of the vital term *timoria* (revenge/punishment) in relation to appropriate anger in the courts can be detected in these two widely separated passages. In the introduction the speaker made an observation on penalties in false witness cases:

> καὶ διὰ τοῦτο τῷ μὲν διώκοντι ἐλάττω ἐποίησαν τὰ ἐπιτίμια, ἐὰν ἡττηθῇ, ἵνα μὴ διὰ τὸ πλῆθος ἀποτρέπωνται διώκειν τοὺς μάρτυρας τῶν ψευδομαρτυρίων οἱ ἀδικούμενοι, τῷ δὲ φεύγοντι μεγάλας ἐπέθηκαν τιμωρίας, ἐὰν ἁλῶσιν καὶ δόξωσιν ὑμῖν τὰ ψευδῆ τὰ ψευδῆ μεμαρτυρηκέναι.[78]
>
> And for this reason (the laws) have made the fines less severe for the prosecutor, if he is defeated, so that those who have been wronged are not deterred from prosecuting witnesses for false witness because of the amount, but on the defendant the laws have imposed heavy penalties (*timōriai*), if they are convicted and have seemed to you to have given false evidence.
>
> (2)

Here the *timōria* imposed primarily suggests the more 'legal' idea of penalties imposed in the interests of the community, but may well include the 'extra-legal' idea of revenge for the plaintiff as well. Towards the end of the speech, shortly after the exegetes' suggestions that *timōria* (here primarily meaning his revenge for the homicide) should be sought (from a court), the speaker asks for the anger of the jury to be put into action, with a reference back to the earlier trial. He argues first that if they had found against the speaker before because they thought he had refused to accept the torture, they should now find against his enemies as he has proved it was them; and second:

> εἰ δ΄ ἐμοὶ ὠργίσθητε ὅτι ἐνεχυράσων ἦλθον ἐπὶ τὴν οἰκίαν τὴν τοῦ Θεοφήμου, καὶ τούτοις νῦν ὀργισθῆναι ὅτι ἐπὶ τὴν ἐμὴν ἦλθον.
>
> and if you were angry with me because I went into Theophemus' house looking for securities, (I ask you now to) be angry now with them because they went into mine.
>
> (79–81)

As Rubinstein has shown (2004: 192–4), appeals both for the jury's anger and to grant *timōria* are relatively rare occurrences in private cases, and she suggests plausibly that in this speech it is the excessive violence used in self-help which explains the appeal for both emotion and result. In fact, as we have seen, the speech does not quite explicitly ask the jury to grant *timōria* to the plaintiff, but the request for anger, following the strong steer from the exegetes towards *timōria*, amounts to the same, and is justified by the recklessness of the homicidal assault on the women, as also by the contempt earlier shown to the state's laws and public bodies.[79]

The final recapitulation highlights the speaker's scrupulous adherence to legality and his willingness to compromise, summing it up with this striking contrast: 'I was so mild towards them' (ὥστε ἐγὼ μὲν οὕτω πρᾶος περὶ τούτους ἦν); whereas 'they were so brutal and disgusting' (οὗτοι δὲ οὕτως ἀσελγεῖς καὶ βδελυροί) that (in addition to their contempt for the laws, decrees and institutions) they carried out their raids on his wife and children, took much more than was their due, and caused the death of the old woman for the sake of a cup, when he had paid them back every obol of the judgement (**81**). Thus, the promise of the introduction is fulfilled (cf. **74**), that most of the speech will properly be concerned to reveal their character by a narrative of their deeds, which will, the speaker hopes, turn the people's anger away from him and onto his 'brutal and disgusting' enemies, and give him (and the slave woman) some form of just revenge.[80]

Notes

1 Suggested with varying degrees of certainty by Delaunois (1962: 48–50); Trevett (1992: 62–75); Tulin (1996: 21); Kapparis (1999: 48–51; 2017: 293–5); MacDowell (2009: 136–40). At the Dublin conference, Kostas Apostolakis expressed his conviction that Apollodorus was primarily responsible for the speech, emphasizing the preponderance of narrative and the use of transitions from indirect to direct speech; see also his chapter in this volume on [Dem.] 50.

2 Serafim 2017 observes the significance of addressing the juries as '*Ō Andres Athenaioi'* or as '*andres dikastai*'. It may then be of interest that in this speech and in Ps.-Dem. 50 only the '*andres dikastai'* form is used.

3 MacDowell (2009: 136–42).

4 Apollodorus was a syntrierarch in 356/5; if he were our speaker, this could be the second trierarchy mentioned in the speech (**49–50**). The speaker had a farm near the Hippodrome, not far from the city (**52, 76**), and had lived there since he was a young man. If he were Apollodorus this would presumably be one of the three farms he had inherited from Pasion (Ps.-Dem. 50.8, cf. 53.4).

5 One might suppose there was a son who died before coming of age, some time between c. 355 and 350. But it would then be surprising that this loss is not mentioned anywhere in Apollodorus' surviving speeches where he excites pity for his family or discusses his career.

6 Further arguments against identifying the two might be derived from the reticence of this speaker about his liturgical career. He mentions many liturgies and *eisphorai* and his *philotimia* during this period, as a result of which he had to sell furniture (**54**), and he insists on his concern to provide his own gear, to avoid trouble (**23**); but one might have expected Apollodorus to give more details, as a litigant orator who tends to reveal more about his activities and character than others (cf. Pearson (1976: 103–4), the 'most egotistical of the orators'). Writing for (or with) another, perhaps Apollodorus chose to emphasize his friend as just a careful, law-abiding, generous, and over-trusting character, and possibly there were not in fact many services to list. It should be remembered, though, that prosecutors naturally use this motif less than defendants. Further, Apollodorus might have mentioned the troubles he had had with Polycles as a parallel to those experienced with Theophemus. See also Kapparis (2017: 293 n. 13).

7 On the naval lists, see, for example, Davies (1969); Gabrielsen (1993, 1994: 149–69, demonstrating how many *epimelētai* and trierarchs can be seen failing in various ways

to return equipment properly; Liddel (2007: 188–91). The text recording Theophemus and Democharesʼ trierarchy is:

Δημοχάρην Παιαν[ιᾶ],
Θεόφημον Εὐωνυμέα,
[ἃ] ἐπὶ τὴν Εὐφυᾶ ὤφειλ[ον],
[ὑ]ποζώματα, ἱστίον, ἀγκύρα[ς]

8 See **34, 53, 58, 60, 63** (use of ‘this man’ – οὑτοσί – solely of Euergus) and **76** (reference to the pending trials for false-witness – τοὺς ἀγῶνας τῶν ψευδομαρτυριῶν), with Rubinstein (2000: 82–4), who shows that in such cases individual prosecutions against separate defendants were the rule, even where they were accused on the same charges.

9 A complicated case, which starts with his loaning 1T to Pantainetus in a mining deal, and later takes it over, with some violence, and has to return 2T. Cf. MacDowell (2006, 128–31). Two men of these names appear, with others of both genders, on a vigorous *defixio* (curse tablet) ‘binding’ their whole persons, spirits, deeds, cocks and vaginas’ (*IG* III 3 = *DTA* 77). For Traill (*Persons of Ancient Athens* nos. 510850~510880 and 430810~430815), suggesting a fourth-century date, these may be the same people; for Osborne and Byrne (*LGPN* II s.v.), and Eidinow (2007: 368), who date it to the third century, they are evidently not.

10 On the risks to witnesses from such an action, Rubinstein (2005, 99–120).

11 So his translators, Gernet (1957: 204); Fisher (1976: 104); Scafuro (2011: 301). Davies (1971: 225) seems to have missed this, when he suggested Theophemus had married and that Mnesiboulus was Theophemus’ father-in-law. Probably he was the husband of a sister not otherwise mentioned, rather than Euergus’ wife’s brother, if he was married.

12 On the speaker’s meticulous concern to observe all laws and procedures, in direct contrast to his opponents’ behaviour, see also Wohl (2010: 99–102).

13 See, for example, Delaunois (1962: 48–50): he criticizes it specifically for prolixity on issues far removed from the case; the narrative starting long after the exordium; proofs badly placed and clumsy; repetitions – among others the slave-torture issue; and long and digressive narratives. But he allows perhaps that the jury would like the volubility and variety on well-worn topics. Cf. also Scafuro (2011: 295–7); Usher (1999: 263–4); Kapparis (2017: 293–4). On false witness trials (mostly arising from inheritance disputes), see also Scafuro (1994: 170–8); MacDowell (2009: 140–1).

14 On the common phenomenon of a double narrative, separated by some argumentation, see Edwards (2004: 318); Kapparis (2017: 285–95).

15 As with others of the less professional orators; for Apollodorus’ taste for narrative see also Alwine (2015: 71–78).

16 Cf. Delaunois (1962: 46–7).

17 Dem. 52 *Ag. Callippus* has two chapters of introduction, 14 of narrative, 17 of argument and conclusion; and much direct speech, of conversations between Callippus and Pasion or Phormion; 53 *Ag. Nicostratus* has three chapters of introduction, 15 of narrative and 11 of arguments and conclusion; and some reported conversations. See Trevett (1992: 79 on structures, 1992: 89 on direct speech); also Delaunois (1962: 48–50).

18 For the importance of assessing the disadvantages faced from the start by our *logographoi*, see also Griffith-Williams in this volume.

19 There seems to have been no attempt to present evidence from the state slave himself either as testimony or under torture; his role seems to have been to seek out citizens to witness the proceedings. Conceivably as a state slave he could not be subjected to torture, but on the other hand might not be acceptable as a witness, or at least not regarded as a reliable witness, especially if citizens were available. On a

related issue, the constraints on slaves informing against their masters in cases of public interest (e.g., sacrilege or treason), see Osborne (2000), with the criticism of Gagarin (2001b).

20 See in detail Gabrielsen (1994: 146–69). The generous treatment by the UK HMRC of wealthy corporations or individuals accused of massive tax evasion or avoidance might seem a comparable case.

21 On the tendency in such cases to review all the elements of the previous case, and invite the jury to view it afresh in the light of all the past disputes and issues between the litigants, see Lanni (2005: 115–6).

22 Perhaps Theophemus offered the slave woman at the first arbitration hearing, and the speaker demurred; but the speaker then became more enthusiastic, and Theophemus held fast to the advantage of the first refusal.

23 On this see, for example, Edwards (2007a: 332–4).

24 Cf. Delaunois (1962: 4).

25 The argument that a narrative has real value for the revelation of character is supported by Arist. *Rhet*. 3.16, 1416b30–1417b11. It thus sets up the subsequent probability argument which works after the litigant has established the bad character of his opponents; see, for example, Alwine (2015: 60–7). See also Kapparis (2017: 294–5, 297–8).

26 Two other Apollodoran examples are found: at the start of his first surviving speech against Callippus (Ps.-Dem. 52.2), he insists that a defendant, faced with a clever speaker, must reveal his character as well as the facts; similarly in the speech against Timotheus (Ps.-Dem. 49.1–4), he recognizes that his case may seem implausible, and that it is necessary to 'narrate everything to you from the beginning'.

27 Cf. Christ (1998); Delaunois (1962: 589).

28 Cf. Trevett (1992: 79); Kapparis (2017: 294–5).

29 On the complexities of Periandrus' law introducing the naval symmories, see the debates in Rhodes (1982); MacDowell (1986); Gabrielsen (1994: 182–94).

30 See above all Gabrielsen (1994: 157–69); Hunter (1994: 120–51).

31 See Edwards (2004: 327).

32 Cf. Edwards (2004: 319, 332–3, 339).

33 Cf. comparable arguments in the speech against Meidias (Dem. 21.29–35).

34 Cf. Gabrielsen (1994: 158–9).

35 He continues his insistence on compulsion at **37** and **42**, and finally in the peroration (**80**): καὶ ἐγὼ μὲν ὑπὸ νόμων καὶ ψηφισμάτων ἀναγκαζόμενος πρόνοιαν ἐποιησάμην ('for my part, being compelled by laws and decrees I took care').

36 Davies (1994: 211–2) cites this citation as the sole reference in the orators to the use of accounts on a stone *stēlē* used as a basis for administrative action; Liddel (2007: 189) mentions references to debts on equipment being valued 'from the *diagramma*' (Dem. 14.21), but whether this was a *stēlē* or a whiteboard is not clear.

37 Gabrielsen (1994: 153–4). Dem. 51 may well be a speech delivered by Demosthenes himself (see, e.g., Usher (1999: 189–91); MacDowell (2009: 133–36)). On trierarchs like these who preferred to use their own equipment and incurred hostility, see Gabrielsen (1989, 1993); Liddel (2007: 272–3).

38 A theme hammered throughout the speech: **35–38**, the reverse brutal incursions on his womenfolk, **55–61**, in the conclusion, **80–1**. See above all Christ (1998).

39 Cf. Sato, this volume.

40 See also Harding (2008: 143–4). The peculiar 'for the tribes' may refer to the tribal boards of wall-builders (*teichopoioi*).

41 Cf. *IG* II^2 1656/7, Rhodes & Osborne 2003, no. 9, for two epigraphic records of the rebuilding, dated at the end of 395/4 and in 394/3.

42 Cf. Garland (1987: 166–7).

43 On the timing, see Davies (1971: 225–6).

44 As Gabrielsen has argued, this and other procedures and cases suggest the *boulē's* primary aim was to get equipment returned and ships sent out as quickly as possible, without antagonizing too far recalcitrant liturgists. Hence perhaps the lenient penalties, and confidence Theophemus gained from this. Harris (2007: 161), arguing against Hunter (1994: 123–4), insists that the trierarch's attempts to recover the gear were not examples of self-help in the absence of state assistance, as he was a magistrate and acting under instructions of a law and a decree. It remains striking, despite this, that the limited degree of authority and support given to his entry to seize goods completely failed to prevent the issue leading to a number of fights and private legal actions. Cf. Rubinstein (2010: 202).
45 Comparably devious plans are later 'attested' by his report of what Theomnestus said directly to him (**64**).
46 On this, see p. 199, this volume.
47 Herman (2006: 268, 286) sees the speaker here as 'subordinating' his natural drive to fight back to the 'rational' defence of the *hubris* against the honour of the *boulē* and *dēmos*, and (as he reports it at least) as delaying his self-defence until he has 'taken into account the needs of the community' and 'telling everybody else there that they must all bear witness to what had just happened'. More plausibly, the speaker is claiming that the state's interest permitted him to respond in tune with his natural instincts, with a proportionate retaliatory violence, and the 'delay' was no longer than it took to shout μαρτύρομαι '*I call on witnesses'*, as do Aristophanic characters when attacked; most of them, however, being unsympathetic sykophants, litigious officials or cowards, are unable or reluctant to retaliate or acquire witnesses (*Ach.* 926, *Clouds* 495, 1222, 1297, *Wasps* 1436, *Peace* 1119, *Birds* 1031, *Frogs* 528, *Wealth* 932). Cf. also Wohl (2010: 103), and on the Aristophanic cases see the detailed analysis of Spatharas (2008).
48 Cf. Christ (1998: 540–1).
49 Cf Trevett (1992: 63–4, 106–7); Kapparis (1999: 52–6).
50 See Usher (1999: 263–4).
51 Dem. 22.42–68, 24.159–86; cf. Christ (1998: 526–7).
52 See Christ (1998); Wohl (2010: 99–100).
53 Davies (1971: 432–3); Trevett (1992: 11–12).
54 Dem. 49.22, 52.8, 14, cf. Davies (1971: 431); Cohen (1992: 144–5).
55 Gabrielsen (1994: 98) supposed the speaker was away at sea, and (presumably) was told when he docked at the Peiraeus, but that seems less likely.
56 Ferguson (1938: 25–6).
57 Steph. Byz s.v. Ἐχελίδαι (ed. Billerbeck & Zubler): δῆμος τῆς Ἀττικῆς, ἀπὸ Ἐχέλου ἥρωος. οὕτως δ΄ ἀπὸ Ἔλους τόπου μεταξὺ ὄντος τοῦ Πειραιέως καὶ τοῦ τετρακώμου Ἡρακλείου, ἐν ᾧ τοὺς γυμνικοὺς ἀγῶνας ἐτίθεσαν τοῖς παναθηναίοις. Also *Etym. Magnum* s.v. Ἔχελος: Ἥρως παρὰ Ἀθηναίοις τιμώμενος καὶ δῆμος τῆς Ἀττικῆς Ἐχελίδαι, ἀπὸ τοῦ παρα κειμένου ἕλους τῷ τόπῳ, ἐν ᾧ ἵδρυται τὸ τοῦ Ἐχέ λου ἄγαλμα. Παρὰ τὸ ἕλος ἔχειν, ἔχελος. Καὶ Ἐχελιδῶν δῆμος, ἀπὸ τοῦ Ἐχέλου.
58 The text reads: τά τε ἐν Ἀκαδημείᾳ καὶ τὰ ἐν Λυκείῳ καὶ τὰ Φαληροῖ καὶ τὰ ἐν τῷ ἱπποδρόμῳ. Probably the last two entries should be conflated into one by the deletion of καί, 'at Phaleron in the Hippodrome', or (less likely) the phrase taken to refer to two stages of the events. Cf. Ferguson (1938: 26 n. 2).
59 The texts on the votive relief read: Face A: Κηφισόδοτος Δεμογένος/ Βουτάδης ἱδρύσατο/ καὶ τὸν βωμόν. Face Ba: Ἑρμῆι καὶ Νύμφαισιν Ἀ<λ>εξὸ [τήνδ' ἀνέθηκεν]. Face Bb: hερμῆς. Ἔχελος. Ἰασίλη. The texts are dated c. 410–00. See also Traill (1975: 50, 87, 114); Kyle (1987: 95–7); Kearns (1989: 165). Benton (1972) unconvincingly proposed Kolonos as the site for Echelidai and the Hippodrome. On the relief of Echelos and Iasile his bride, also Kossatz-Deisha in *LIMC* III, 674–5.

60 The disputed question of where the 50 wool-bearing sheep were grazing before they were seized contributes to the debate on the extent of integrated agro-pastoral agriculture in Attica. Hodkinson (1988, 45–51) seems to me to be right (against, e.g., Skydsgaard 1988; Isager & Skydsgaard 1992: 101–2, cf. Howe 2008: 59), that the sheep must be supposed to have been grazing very close to the farm and its land: crucial points are that news of the sheep-raid had reached the wife from one of the neighbours, and that the recapitulation at **76** links together the seizure of furniture, slaves and sheep as taking place where 'I farm at the Hippodrome' and also near Theophemus' own house. The sheep may not have been grazing on that day on his own land (cf. **53**), but perhaps on public land nearby; the claim in Stephanus and the *Etymologicum Graecum* that Echelidai was named after a marsh may suggest they were grazing on marshy ground.

61 Cf. Harpokration s.v. Alkimachos: Αλκίμαχος: Δημοσθένης ἐν τῷ κατ΄ Εὐέργου καὶ Μνησιβούλου. στρατηγὸς οὗτός ἐστιν, Ἀναγυράσιος τῶν δήμων, στρατηγήσας ἐν τῷ πρὸς Φίλιππον πολέμῳ. Alcimachus: 'Demosthenes in the *Against Euergus and Mnesiboulus*. This man is a general, of the deme Anagyrous, who had a command in the war against Philip'.

62 Hansen (1984: 160); Develin (1989: 285). It depends partly on whether the two-year gap is observed at this period of syntrierarchies. See Scafuro ad loc.

63 On this sort of argument, and counters to it, see Gabrielsen (1994: 56). Apollodorus would be likely to have said more about this if it were his own case.

64 See Tulin (1996: 2), also Wohl (2010: 101–2) observing how the speaker cannot avoid admitting that Theophemus was close to being able to justify his violent acts.

65 Apollodorus' other speeches are also all very fond of direct speech – for example, Ps.-Dem. 50.26, 34–7, 39–40, 48–9; 52.5–6, 9–11; 53.11–12; 59.70, 82, 110. See Kapparis (1999: 53, 2017: 295–300); Apostolakis in this volume.

66 A comparable case is Apollodorus' report of the lying assurances Nicostratus made to him which he claims (implausibly) he believed, being an unsuspecting youth (Ps.-Dem. 53.11).

67 On the implausible closeness of her words to those of the speaker addressing the jury, see above all Gagarin (2001a: 168–70), in his valuable survey of cases of 'women's voices' in the orators.

68 On Lys. 32, see Usher (1999: 80–2); Gagarin (2001a: 162–8); Edwards (2007a: 331–5). At Dem. 55.24 the speaker offers a brief report of a speech delivered by his mother on the limited damage done by the watercourse to his opponents' cereal crops; the situation is considerably less dramatic, so there is arguably less need for a direct speech, cf. Gagarin (2001a: 171–2); Edwards (2007a: 340).

69 Edwards (2007a: 330–1). These cases may be compared to those where a women's voice and her contribution to the case is heard in court via the evidentiary oath: for example, the oath sworn by Plangon on the parentage of her sons (Dem. 39 and 40). Cf. , for example, Hunter (1994: 35–7, 53, 63–5); Osborne (2000: 79–81).

70 On the little known about such exegetes at Athens, see Jacoby (1949: 8–51); Parker (1996: 220; 2011, 45). It is not clear which exegetes these were (probably the *Pythochrēstoi*), nor how many served at any one time. On the legal issues of the homicide law raised by their advice, see the convincing account of Tulin (1996: 21–54), and also Wohl (2010: 106–12).

71 See Cairns (2015: 659). See pp. 200–2, this volume, on the meanings of *timōria*/*timōreisthai* in such contexts.

72 Naturally neither she nor the wife are given their names, according to the convention of this public genre that honourable women are not named (Schaps 1983). But the wife's supposed character and loyalty shines out from her speech.

73 On the connections here and elsewhere in Greece between towers and the management of slaves in rural landscapes, see Morris & Papadopoulos (2005: 155–225, esp. 186–7, 193, 207–9).

74 Much pity and anger are excited at the damaged and discoloured body of the defenceless old woman; the physiological description of injuries to the body, with its strong use of medical terms, is unusually vivid as Wohl (2010: 105) brings out. She demonstrates well too how the speaker reveals this further gap in the homicide law, that it denies an ex-slave (and quasi-metic) woman any legal recourse for the fatal assault, without explicitly stating that the law is inadequate (Wohl 2010: 106–12).
75 Historic presents are frequent throughout the Apollodoran corpus, for example, Ps.-Dem. 49.14–15, 31–2, 50.24, 27, 29, 32–3, 37, 44, 46, 47, 50, 52.3, 53.13, 17, 59.26, 29, 50, 52, 58, 72, 83. Cf. Kapparis (2017: 300–1).
76 Alcidamas 15, esp. 12–13. On this work, and its possible adversative relation to the contemporary teaching and writings of Isocrates, cf. Muir (2001: vii–xv); Edwards (2007b); also Sato in this volume.
77 See also for an account of the power of this passage, Wohl (2010: 110–12).
78 Accepting with Dilts' OCT the plural subjunctives found in most MSS, on the assumption that the speaker switches from the generalizing singular τῷ δὲ φεύγοντι to a more specific plural ἁλῶσιν καὶ δόξωσιν as he is here in effect accusing the two relatives of collective lying in court.
79 Cf. also Cairns (2015: 659). Harris (2017) argues that forensic speakers (in contrast to tragic characters) refrain from explicit description of their anger, preferring to invite the jury to express their anger in a conviction. His paper perhaps minimizes cases where wronged speakers' anger is expressed with an 'anger' word, and ignores cases where it is expressed in other ways (notably Lys. 1.24–7, where the work is done by 'why are you committing *hybris* entering my house?', or indeed by the endlessly repeated use of *hybris*-words in Demosthenes' speech against Meidias). Cf. also Spatharas (2017b: 208–11).
80 On the language of 'disgust' in forensic oratory cf. Fisher (2017); Spatharas (2017a).

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Chapter 13

Truth and deception in Athenian forensic narratives

An assessment of Demosthenes 54 and Lysias 3[1]

Christos Kremmydas

The problem

In the adversarial system of Classical Athens, competing claims presented by the litigants (and often their supporters) vied for the vote of the *dikastai,* a heterogeneous audience of over two hundred Athenian lay judges from different socio-economic backgrounds. The latter's verdict depended to a large extent on the credibility of the stories presented by the litigants. Both litigants (and their supporting speakers in some cases) wished to persuade their audience that their story was truthful, while that of their opponent was untruthful, false, deceptive.[2] And although forensic stories were always backed up by logical argumentation, enhanced through the presentation of a speaker's and the undermining of the opponent's character, reinforced by a 'parade' of witnesses, legal or financial documents, and strengthened through appeals to the emotions, there is no doubt that narratives were at the centre of Athenian trials, even when this is not always reflected in some of the extant forensic speeches.[3]

The centrality of narrative to Athenian lawcourt cases was stressed by Michael Gagarin in his 2003 *APA* Presidential Address, where he drew parallels between the use of narratives in modern and ancient legal cases.[4] Linguists, legal scholars and forensic psychologists have also been discussing the significance of narratives in the context of forensic investigations and trials.[5] And although there seems to be broad agreement among classical scholars, and legal and forensic psychologists regarding the key role of narratives in forensic cases, there is no consensus among classical scholars on how to evaluate the merits of the stories related by the litigants in extant Athenian forensic speeches. General criteria of historical reliability have been put forward by some classicists yet have not been used widely.[6] However, one should also consider the extent to which any criteria of reliability we seek to apply to Athenian forensic speeches correspond to those used by *dikastai* judging cases in the lawcourts of Athens. The problem is certainly complex, especially due to the nature of the extant evidence. Usually, we only hear one side of a legal dispute and one story.[7] The other litigant's story can be reconstructed only partially through rhetorically distorted allusions identified in an adversary's (or supporting speaker's) extant forensic speech. Finally,

some of the surviving speeches have been subjected to post-delivery revision, and therefore one should always consider the extent to which a narrative in an extant speech corresponds to the story related by the litigant during the trial.

In this chapter, I shall focus on the narrative sections of Demosthenes 54 and Lysias 3 and examine whether a modern method of veracity assessment drawn from forensic psychology might represent a more useful means of evaluating Athenian forensic narratives. After briefly introducing the speeches, I shall discuss some of the key questions raised by their respective narrative sections and consider modern scholarly views regarding their veracity or mendacity. I shall then evaluate the merits and demerits of the modern method of veracity assessment before applying it to the narratives from the two speeches. Finally, I shall discuss my findings and consider their implications for the study of forensic oratory.

Demosthenes 54 *Against Conon*: brief overview of the case

Demosthenes' *Against Conon* is one of his best-known speeches. It stands out because of its engaging characterisation and the qualities of its arresting narrative.[8] It is one of only two extant forensic speeches delivered in a private action for *aikeia* ('assault' or 'battery').[9] The penalty is not specified at any point in this speech; as this was an *agōn timētos* the penalty would have been assessed in a second vote only in the case of a guilty verdict.[10] The case came to court because the parties had failed to settle the dispute out-of-court through public arbitration (**26–28**).[11] Yet, despite the unspecified time-lag between the events and the court hearing, it is likely that the substance of the story would not have changed significantly since the arbitration stage.

Demosthenes' speech is delivered by the plaintiff, Ariston,[12] so it is important for him to establish the facts of the case and implant his version of events in the minds of the *dikastai*. His story is broken up into three parts distinguished through their slightly different focus and the introduction of witness depositions (**6, 9, 10, 12, 29, 36)** and laws (**24**).

Ariston had been at the receiving end of hybristic, aggressive behaviour on the part of Conon's sons since the time they had all been on military duty at Panactum two years before the time of the trial (ἔτος τουτὶ τρίτον, **3**).[13] It is clear that by describing his earlier altercations with Conon's sons, Ariston seeks to suggest that this behaviour was typical of their father, too (the implication being that hybristic behaviour runs in Conon's family) and that the earlier episode was the prelude to the attack that led to the current private action for assault. Ariston also seeks to portray himself in a positive light by stressing, first, that he had sought the intervention of the general (**4–5**), yet Conon's sons continued with their appalling behaviour at the camp, and second, that he did not pursue legal redress on his return to Athens; therefore he is not a litigious individual (**6**). The sequel took place in Athens at night (**7–9**). Ariston makes it look like an unprovoked, drunken assault by Conon, one of his sons and a number of their drinking companions.

The third part of the narrative revolves around Ariston's physical condition after the violent assault and his prognosis (**10–12**). This is clearly not a random order of narrating the events: it is logical and chronological, and therefore more memorable. From the 'pre-history' of the relations between Ariston and Conon and his sons (**3–6**),[14] the narrative proceeds smoothly and naturally to the core event of the assault on Ariston by Conon and one of his sons (**7–9**), before focussing on Ariston's medical condition after the attack and the doctor's testimony (**10–12**). There is a further narrative (**26–28**) embedded in the proofs section, which seeks to anticipate and rebut some of Conon's arguments, which relate to their offer of *basanos* of Conon's slaves which had been rejected by Ariston. This is not relevant to the events at the heart of this suit for assault, and therefore, will not be discussed here.

Ariston's story: questions worth asking

Before assessing the veracity of Ariston's narrative, it is worth discussing a few points of concern and raising a few questions regarding the story he presents to the *dikastai*:

1) Ariston claims that the enmity between himself and Conon's sons was initiated at Panactum during their military service (**3**). He also suggests that the nocturnal attack at the camp was unprovoked, taking place after the general had reprimanded Conon's sons (**5**). However, given the elite background of some of the participants in the events related by Ariston,[15] it is likely that there might have been an undercurrent of intra-elite enmity behind this series of incidents, which Ariston is obfuscating here because it does not confer any rhetorical benefit on his case (on the contrary it might have undermined his characterisation). Instead, throughout the speech he portrays Conon and his sons as members of a gang. It is possible that Ariston is also playing down his own involvement even if he had been provoked by Conon's sons at some point.
2) Why did Ariston not file a suit immediately after his return to Athens from military service? Is it really because he was non-litigious, as he suggests at **6**? Carey rightly wonders why the *stratēgos* was not invited to give a deposition at this trial given his involvement at the camp.[16] However, while this crucial omission from the list of potential witnesses does indeed give rise to doubts regarding the veracity of Ariston's account, his non-inclusion might be due to the absence of the *stratēgos* from Athens at the time of the trial.[17]
3) Where was Conon's second son during the main episode of the assault? While Ctesias, one of the two brothers, is referred to by name at **7** and **22**, the other brother is not even mentioned by name and it is not clear whether he was involved in the main attack on Ariston that took place in Athens. The reference to Conon's sons (in the plural) early on in the speech (**3**) and the mention of only one in the account of the assault in Athens helps the speaker

undermine Conon's character and highlight his responsibility as the father of two ill-behaved sons (7). Even though one of the sons had no involvement in the assault, the insinuation is that they share the same qualities as children of the same father. It is also worth noting that in the narrative of the incidents at Panactum, neither son is referred to by name so that blame for their behaviour can be more easily assigned to their father, Conon.

4) Rather surprisingly, Conon appears as the sole subject of only six sentences in the speech. In the rest of the 21 attestations of his name, he is represented as having always acted as part of a wider group, as a 'ring-leader' of the gang (cf. no. 1 above). Although he was involved in the assault on Ariston, he was one of several attackers. The only action he is said to have performed on his own is the infamous 'cock' gesture (**9**), which epitomizes his *hybris* and makes it more memorable through visualisation.
5) It is unclear what exactly happened during the first brief, nocturnal encounter between Ariston and his friend, Phanostratus, and Ctesias, Conon's son, close to the Leokoreion (**7**). Ariston stresses that Ctesias was drunk (the present participle μεθύων is employed twice in two successive sentences), and whatever he shouted at them and mumbled to himself was a result of his drunkenness and not part of an argument between him and Ariston and Phanostratus. It is likely that Ariston is not telling the whole truth here. An exchange of abusive words at this point might explain what followed later that evening.[18]
6) Questions of timing are generally left quite vague in the speech: the exact date of the expedition to Panactum, the timing of the incident at the camp and the exact time of the nocturnal attack in the agora ('not long after, while I was taking a stroll … in the evening …': **7**) are all left rather vague. However, it has to be noted that narrative time is not probably meant to (and does not have to) be exact unless it were to help the speaker's case. The internal, relative chronology of the narrative is more relevant than absolute time as it is meant to orient the jury and help them place events in time.

Can we tell truth from lies in Ariston's story?

In this as in other Athenian trials the pursuit of truth in connection with a legal dispute would have been central to the jury's decision, at least this is what litigants claim.[19] This is stressed by Ariston[20] and underlies the use of truth vocabulary at key moments in the speech that underscores the reliability of his narrative.[21] Although there is only a single attestation of the verb ἐξαπατάω ('to deceive') towards the end of the speech,[22] Ariston seeks to persuade the *dikastai* that the defendant would seek to deceive them: this is confirmed by the reference to Conon's delaying and blocking tactics at the *diaita/*arbitration stage[23] and his deceptive use of oaths and curses (**38–40**). Nevertheless, in default of additional evidence, we cannot tell for sure whether references to the defendant's dishonesty, untruths and deception are not merely part of Ariston's rhetorical strategy of character assassination.

Scholars' views regarding the reliability of Ariston's story in Dem. 54

Modern scholars have generally tended to accept Ariston's account as probably true despite their reservations regarding some of its aspects. Douglas MacDowell avers that 'his account of the facts is essentially convincing ' and finds it hard to imagine 'that he did not win the case'.[24] Wolff considers Ariston's account 'completely convincing' yet identifies weaknesses in his version of events.[25] Steel intimates that

> Ariston's case is not perhaps as strong as an initial reading suggests. The apparent strength, indeed, depends as much on the way in which Demosthenes constructs the speech as on the fact of the case, and above all on the characterization he applies to both Ariston and Konon throughout the speech.[26]

In their short introduction to the speech, Wolpert and Kapparis express their scepticism regarding the quality of the evidence for the attack. They also raise doubts as to whether Ariston could prove that Conon and his 'gang' had started the fight and, indeed, that Conon had taken part in it.[27] Finally, Chris Carey maintains that Ariston probably tells the truth although not necessarily the whole truth:

> It seems that Ariston's account is broadly true. But whether Ariston has told the *whole* truth is uncertain. One cannot but be struck by the brevity of Ariston's account of his first meeting with Ctesias (**7**) … But the meeting is passed over very quickly.[28]

I shall now introduce and discuss the second case under consideration, Lysias' speech *Against Simon*.

Lysias 3 *Against Simon*: brief overview of the case

Lysias 3 is a defence speech delivered in a private case of wounding with intent (*trauma ek pronoias*).[29] The thematic similarities to Demosthenes 54 are obvious: assault, violence and wounding are present here, too. However, the stakes in this case were higher, since the prosecutor chose a suit that was brought before the Areopagus, a court reserved primarily for homicide cases.[30] What is more, procedural features reserved for homicide cases, such as the *diōmosia* and the higher standards of relevance, are likely to have applied to this case, too.[31] The penalty in this case was exile and/or confiscation of property.[32] And since this is a defence speech and the prosecutor, Simon, would have already laid out the facts of the case, the speaker feels the need to relate his own side of what happened.

This case revolves around the rivalry between two Athenians, Simon and the unnamed defendant, who were both in love with a young Plataean boy, Theodotus. The young boy had allegedly fled from the abusive Simon and found refuge in the speaker's house when the latter was apparently absent. Simon tracked down the speaker in another house and called him out; they then had their first altercation which resulted in the injury of one of the speaker's friends. At that moment, the speaker decided it was better for him to leave Athens altogether with the young Plataean lover in tow. After a few months, he came back to the city and set up home in the Peiraeus. Simon found out the Plataean boy's new whereabouts and set an ambush to abduct him. The latter made an escape without his cloak, while Simon, the speaker, and others got involved in a scuffle. The pursuit meandered through the streets of Athens until a proper street fight took place. The Plataean boy and the speaker both defended themselves but in the course of the fight certain people got injured. Some of Simon's associates had even apologized to the speaker in the aftermath of the fight. Simon did not start court proceedings until four years later.[33]

Scholars' views regarding the reliability of the speaker's story in Lysias 3

Modern scholars have generally tended to focus more on Lysias' masterful characterisation of the speaker as it effortlessly emerges from the narrative and its interaction with the argumentation. Questions regarding the reliability of the speaker's narrative have generally not been pressed too hard. Key questions debated revolve around the legal status of Theodotus, his contract with the speaker and the size of Simon's property. Among recent commentators, Carey and Todd have also raised questions regarding individual aspects of events related by the speaker and especially those taking place in the Peiraeus after his and Theodotus' return to Athens. Carey is the more sceptical of the two, despite praising the narrative qualities of the speech and its characterisation, and notes 'The reader who can resist the spell of Lysias' characterization may well suspect that the blame in this case was more evenly distributed than our speech suggests'.[34] Meanwhile, Todd points to 'the use of circumstantial details [in order] to create narrative vividness' and to 'render the narrative believable, or at least sufficiently so to drive out of the audience's mind the implications of the alternative version which they will have heard from Simon as prosecutor immediately beforehand'.[35]

It is evident from this brief discussion of recent scholarship on these two speeches that to date the credibility or veracity of the forensic narratives has been assessed on the basis of the key criteria of plausibility, which in turn is effected through the use of vivid details. While this approach to forensic narratives is valid, it seems to be focussing on individual details rather than the overall effect of a narrative. This is necessary, of course, since any given narrative may contain truthful as well as untruthful elements. Yet an attempt to evaluate the veracity or falsity of forensic narratives in their entirety through an interdisciplinary approach might also prove useful.[36]

Forensic psychology, detection of deception and the Attic orators: a new approach

The detection of verbal deception is indeed an exciting prospect but, at the same time, a highly complex task. Psychologists working on the detection of verbal deception believe that the brain cannot effectively control and manipulate two 'stories' (a true and a false one) at the same time. As a result, in high-stakes contexts, this leads to 'leaks' or cues which may subsequently be identified.[37] And despite lay beliefs about the ability of individuals to recognize deception cues, these are mainly non-verbal (or physiological, i.e., they relate to gestures and instinctive body movements), non-scientific and often misleading. For the past 30 years or so, forensic psychologists have been trying to develop reliable techniques of detecting verbal and non-verbal cues to deception.[38] Space does not permit me to go into much detail regarding the range of the available techniques for detecting verbal deception. In the rest of my chapter, I shall present and apply one such technique to the narrative of Demosthenes 54 and Lysias 3. I shall then compare my findings and conclude that this interdisciplinary technique may help improve our assessment of the veracity of key forensic narratives and shed light on their rhetorical make-up.

Statement Validity Assessment and Criteria-Based Content Analysis (CBCA)

Statement Validity Assessment (SVA)[39] is probably the best-known verbal deception detection technique (or, more accurately, Veracity Assessment tool) and seeks to identify verbal cues in witness/suspect statements. It has been researched quite extensively by forensic psychologists even though it is not accepted as evidence in some jurisdictions.[40]

It comprises four stages, of which the third is the most crucial and relevant for the purposes of this chapter: CBCA seeks to discriminate between truth-telling and lying statements on the basis of the extent to which their written statements meet a number of criteria of content.[41] Nineteen criteria are used by 'raters' for the evaluation of written statements provided by witnesses, victims and suspects; these criteria are grouped into four categories:[42]

General characteristics: 1) logical structure (coherence and internal consistency of statement), 2) unstructured production,[43] 3) quantity of details (e.g., specific descriptions of place, time, persons, objects and events).

Specific contents: 4) contextual embedding (events placed in 'space and time' and actions related to other daily activities and customs), 5) description of interactions (with the perpetrator and witnesses), 6) reproduction of conversation, 7) unexpected complications during the incident, 8) unusual details ('surprising but meaningful details'), 9) superfluous details, 10) accurately reported details misunderstood, 11) related external associations (events that

are not actually part of the alleged offence but are related to it), 12) accounts of subjective mental state of subject (development and change of feelings experienced during/at the time of the incident; reports of thoughts included, too), 13) attribution of perpetrator's mental state (alleged offender's feelings, thoughts and motives).

Motivation-related contents: 14) spontaneous corrections 15) admitting lack of memory, 16) raising doubts about one's own testimony, 17) self-deprecation, 18) pardoning the perpetrator.

Offence-specific elements: 19) details characteristic of the offence (i.e., elements of the crime known to the professionals to be typical for the type of crime investigated but counter-intuitive for the general public).

There is flexibility regarding the application of these criteria: since they were developed to address a specific type of crime, some of them may be more relevant than others in certain contexts. For instance, criteria nos. 2, 3, 4 and 6 were found to be particularly effective at discriminating between true and false statements.[44]

To what extent might CBCA be applicable to Athenian forensic narratives?

I shall now consider the advantages and disadvantages of applying this technique of detecting verbal deception to forensic narratives from Classical Athens and discuss whether it might help enhance our understanding of verbal deception in Athenian forensic oratory.

First, the use of CBCA for an analysis of narratives from Athenian trials presents a number of advantages:

i. Unlike other available techniques for the detection of verbal deception,[45] CBCA does not require any interaction between the person giving a statement and an interviewer. Written transcripts of statements to interviewers are the basis of this type of assessment.[46]
ii. The technique in question evaluates key features of the content and structure rather than simply linguistic aspects of the narrative. The fact that the texts to which it is applied were originally composed in an ancient language is thus rendered less problematic.
iii. CBCA has been applied to longer as well as shorter statements ranging from anything between ca. 200 and 1200 words. This would seem to match the range of lengths attested in Athenian forensic narratives, at least most of the ones attested in private speeches (the narrative in Dem. 54 is 828, while the one in Lys. 3 is 619 words in the Greek OCT).
iv. CBCA has been deemed particularly useful in cases where the 'ground truth' was not known. It would thus seem to be more relevant to extant forensic narratives from the Athenian lawcourts, which most of the time represent only one side of the legal dispute.

v. It has been shown in experimental settings that CBCA can discriminate between truth tellers and liars when their respective statements are produced not immediately after (spontaneous) but some time after the event related.[47] This would seem to favour the application of CBCA to the reconstructions of offences related in Athenian forensic orations as the latter were composed and delivered a considerable time after the events at stake.
vi. The orators who composed the forensic speeches lacked 'detection awareness', and therefore the stories they composed would have aimed at plausibility but might still contain deceptive cues if they were lying. And even though the opposition (through their own version of events, by presenting witness testimony or parading a host of arguments and anticipating or refuting those of the opposition) would have sought to contradict and undermine a speaker's version of events, this is substantially different from knowing that their written speech was going to be analyzed by individuals skilled in the detection of deception.
vii. Finally, it is worth examining whether the stakes involved in a legal dispute that had reached the law courts would have made the production of cues more likely in the case of a lying litigant.[48] And although the stakes would have differed between types of legal actions (e.g., in cases of homicide or in many public actions, such as *eisangelia*, they would have been considerably higher), the awareness of legal risk would have increased a speaker's motivation to lie, thus potentially leading to the production of cues. However, since many of the extant speeches were written by speechwriters for delivery by the litigants, it is doubtful that the awareness of the stakes in a given case would have also had an impact on the speechwriter composing the narrative.[49] It is worth exploring further whether deceptive cues might have survived the process of speechwriter-client consultation and the composition of the speech itself.

However, the use of CBCA also presents certain challenges. Further questions need to be addressed especially in relation to its potential application to Athenian forensic narratives:

a) Deception or truthfulness cannot be proven conclusively when it comes to forensic narratives. After all, deception CBCA is only likely to help establish the likelihood of deception or truthfulness in any given statement.
b) In the case of the forensic narratives from Classical Athens, we are dealing not with witness statements in a modern sense but rather with narratives of events involving litigants as eyewitnesses which were moulded by highly skilled orators/speechwriters.[50] No one would dispute the fact that these professionals were more skilled than the 'average' Athenian at telling convincing lies. However, one might also counter that, even though they would have helped make a forensic narrative more engaging and persuasive, skilled orators would not have eliminated key elements of an untrue story. And even

where orators succeeded in persuading their audiences, they did not necessarily succeed in eliminating weaknesses in the presentation of their material (obfuscation, vagueness, lack of sufficient details, internal inconsistencies) which might still be spotted by modern scholars.

As for the narrative of an event at the heart of a dispute, it would have already been put together and presented at the arbitration meeting or the *anakrisis* some time after the actual events and before the court hearing. Since it was thus 'fixed' in a sense, it would have been more difficult for a speaker to alter it substantially with a view to presenting it in court.

I shall now discuss the results of the CBCA analysis of the narrative sections in Dem. 54 and Lys. 3. The scoring scale used is 0–2; 0 indicates absence, 1 presence and 2 strong presence of any given criterion.[51]

CBCA applied to Dem. 54 and Lys. 3

The CBCA analysis of the narrative passages in Dem. 54 indicates the strong presence of certain criteria (e.g., quantity of details, contextual embedding, description of interactions, unusual details, related external associations, accounts of subjective mental state, attribution of perpetrator's mental state) especially in the middle part of the *diēgēsis*. In total, this narrative scores an average of 17.5 out of a possible 26. This suggests the strong likelihood that Ariston is telling the truth about what happened (a higher score indicates veracity) and concurs with Carey's assessment that Ariston was telling the truth, even though not necessarily the whole truth.[52]

Meanwhile, in Lys. 3 the scores for quantity of details, contextual embedding, superfluous details and related external associations are lower than in Dem. 54, while the scores for logical structure, unstructured production, descriptions of interactions, reproduction of conversation and attribution of perpetrator's mental state are the same. Lys. 3 outscores Dem. 54 only in the criteria for unexpected complications. The total score of the narrative is 12 out of 26, significantly lower than the score for the narrative in Dem. 54.

CBCA scoring and discussion

The results of CBCA in this case study[53] seem to confirm scholars' assessments with regard to the truthfulness of Ariston's account in Dem. 54 and to raise doubts about the narrative of the defendant in Lys. 3. On a number of content criteria Ariston's narrative scores higher than that of the speaker in Lysias' *Against Simon* (quantity and quality of details, contextual embedding, description of interactions, unusual details and details characteristic of the offence[54]).[55] Both narratives have a generally logical structure, even though one might want to ask further questions about specific omissions and points of detail. With the possible exception of the

doctor's 'report' in Dem. 54.11–12, there is little that one would classify under 'unstructured production'. The narratives generally follow a chronological order in order to make them more memorable to the audience. However, it is interesting that no details of conversations are reported with the exception of Ariston's generalizing comments about what Conon's sons had told them at the camp in Panactum or the reference to the drunken, unintelligible mutterings of members of Conon's gang in the agora and the hybristic words uttered by them during the attack.[56] Although this way Ariston could have added to the general impression of truthfulness of his narrative, these exchanges are omitted and the implication is that Ariston might be hiding something.[57] Finally, in both speeches there is no evidence of misunderstandings of the events related.

Overall, the narrative in Dem. 54 scores higher than Lys. 3 in six out of 13 criteria, whereas Lys. 3 scores higher in only one out of 13. This would suggest that Ariston's narrative is more likely to be truthful than that of the defendant in Lysias' speech *Against Simon*. So, might the zero score on certain criteria in both speeches (e.g., superfluous details, unstructured production) be due to the intervention of the logographers (Demosthenes and Lysias respectively)? That would explain the absence of any evidence of spontaneity from both speeches. Meanwhile, the higher or lower scores in the remaining criteria might indeed suggest a higher or lower degree of veracity of the story told, and indicate that a 'core' of the original story as related by the litigant had been represented largely accurately even after the intervention of the logographer. If the intervention of a logographer was expected to make the narrative come across as truthful, then one should not expect any major discrepancies in the scores of the two speeches. If a certain logographic 'template' for forensic narratives was being used then this is not immediately obvious.

I believe it is still too early to tell whether CBCA can get us any closer to the truth in the evaluation of Athenian forensic narratives and in the analysis of the rhetorical strategies used by the orators in order to persuade the judges.[58] There is no doubt that further work is required: first, more narratives from speeches of other orators and from a wider range of legal and rhetorical contexts need to be subjected to CBCA.[59] Second, it is worth examining whether there are significant discrepancies in the scores 'achieved' by speeches of the same orator as this would suggest that the process of speechwriting did not affect the veracity of a narrative. Third, further diagnostic criteria and individual cues to deception should also be considered in order to confirm and complement (or even challenge) the results of CBCA and especially where CBCA might not be applicable. My preliminary investigation suggests in some speeches CBCA may not have any diagnostic value simply because narrative does not play a significant role in them.[60] Yet, despite its limitations, CBCA should not be dismissed out of hand. I shall now conclude this case study by considering the possible wider implications in terms of our study of Athenian forensic oratory.

Conclusion

In his seminal article on 'The Use and Abuse of the Attic Orators', Stephen Todd considered the question of the truthfulness or untruthfulness of the accounts offered by the orators and the implications for our understanding of Greek political and social history:

> If we start then with the premise that an orator will lie his head off at the slightest opportunity, where does that leave us? It seems clear that it is on the level of 'events' that the orators are at their most unreliable; and that the attempt to write narrative history on the basis of these sources is doomed to failure.[61]

There is no doubt that the stakes are high in this quest for historical truth but Todd is thinking (mainly) of long historical narratives in public forensic speeches.[62] However, applying CBCA to narratives in a wider range of speeches and rhetorical and legal contexts may still contribute to our understanding of narratives as part of the rhetorical strategies employed by the orators in Athenian forensic oratory in at least three important ways: first, the use of CBCA may indeed flag up forensic narratives that give rise to suspicions of verbal deception or are likely to be truthful (thus confirming or challenging scholarly views about them). This should then lead to further reflection regarding the extent to which the legal and rhetorical context has affected the presentation of the narratives and the generation of deceptive cues. Furthermore, it should encourage a reconsideration of the interaction of narrative with other rhetorical means of persuasion in forensic oratory.

Second, since the results of CBCA suggest a certain tension between rhetorical input and the statement of a litigant's first-hand experience (what I called the 'core' of the narrative earlier), this analysis may also shed light on the process of preparing a speech for delivery in the court (whether speeches were intended for delivery by the orators themselves or their clients).

Third, it may also help us reflect further on the ways in which a forensic narrative could create an impression of authenticity, and thus engender credibility.

This modern approach drawn from forensic and cognitive psychology and a traditional, close analysis of the forensic narratives should complement each other in order to establish the likelihood of truthfulness or deception in forensic narratives from Classical Athens. Such a coordinated approach will also illuminate the complex rhetorical strategies employed by the orators in the high-stakes lawcourt cases in which they were embroiled and will demonstrate that the input of logographers failed to eradicate hints of rhetorical deception totally from their forensic speeches.

Appendix: CBCA scoring of narratives in Dem. 54 and Lys. 3

Criteria	*Dem. 54.3–12*		*Lys. 3.6–20*	
	C1	*C2*[63]	*C1*	*C2*
1. Logical structure	2	2	1	2
2. Unstructured production	0	0	0	0
3. Quantity of details	2	2	2	2
4. Contextual embedding	2	2	1	1
5. Description of interactions	2	2	2	2
6. Reproduction of conversation	0	0	0	0
7. Unexpected complications	0	0	0	0
8. Unusual details	2	2	1	1
9. Superfluous details	1	1	0	0
10. Accurately reported details misunderstood	0	0	0	0
11. Related external associations	2	1	1	1
12. Accounts of subjective mental state	2	2	2	2
13. Attribution of perpetrator's mental state	2	2	2	1
19. Details characteristic of the offence	1	1	0	0
TOTAL	18/26	17/26	12/26	12/26

The examination of intercoder reliability through ReCal2 returned a high degree of reliability of the two coders' scores: percentage agreement was 92.9% and a coefficient of 0.885 on Krippendorff's alpha (a) for the narrative from Dem. 54; the agreement was 85.7% and a coefficient of 0.789 on these two indices for the narrative from Lys. 3. This high degree of agreement (close to or over 90% in terms of percentage) and the high coefficients (close to or over 0.8) in the scores returned by two coders suggest the reliability of the analysis on the basis of the content criteria used.

Notes

1 I would like to thank Prof. Mike Edwards and Dr Dimos Spatharas for their kind invitation to contribute a paper to the 'Forensic Narratives' panel at the 9th Celtic Conference in Classics (Dublin, 22–25 June 2016) and a chapter to the current volume. I also wish to thank the panel participants for their helpful suggestions during the discussion of my paper and Giulia Maltagliati for her help with CBCA analysis. Research for this chapter was facilitated by a Research Fellowship of the International Society for the History of Rhetoric, for which I am profoundly grateful. The chapter was revised and completed at the Institute for Advanced Study in Princeton, where I was an Elizabeth and J. Richardson Dilworth Fellow in the Spring term of 2017.

2 The *topos* of the speaker's truthfulness is frequently attested: for example, Antiph. 2.4.1, 5.5; Andoc. 1.37, 55; Lys. 4.4, 19.19; Dem. 18.21 (a combination of ἀλήθεια

and ἀκρίβεια: πάνθ' ὑπὲρ τῆς ἀληθείας ἀκριβολογοῦμαι καὶ διεξέρχομαι), 22, 115 (followed by a decree), 249, 252, 19.96, 161 (followed by a decree), 20.88, 21.119; Hyp. 3 (*Athenog*.) col. 1, see also n. 16 below; contrast anti-deception *topoi* Appendix I of Kremmydas (2013: 87).

3 Aristotle's account of forensic narrative (διήγησις) in the *Rhetoric* (3.16, 1416b29–17b) is rather superficial and generally unsatisfactory; it stresses the need for moderation in terms of length and notes the differentiated rhetorical needs of prosecution and defence speeches. He also remarks that narrative should reflect character (ἠθική). However, the function and placement of narrative is not always uniform in the extant forensic speeches: its length varies considerably from case to case, it is often broken up into different sections presented at different points in a speech, and may be altogether absent from some speeches (e.g., Lys. 10).

4 Gagarin (2003). See Gagarin (2013), where he argues about the speeches as sources of law. Cf. also Spatharas (2009: 99–100).

5 See, for example, Brooks and Gewirtz (1994); Cotteril (2003: 19–90); Heffer (2012); Ward (2012).

6 For example, Harris (1995: 7–16); Paulsen (1999: 446–7); Golden (2000: 162–3). These criteria have only been applied to a very narrow sample of forensic speeches (the speeches of Demosthenes and Aeschines in the trial on the *False Embassy,* Dem. 19 and Aeschin. 2). In a forthcoming publication, I seek to apply the method used in this chapter to these speeches, too.

7 Only a handful of opposing speeches from individual Athenian trials survive: Dem. 19 and Aeschin. 2 (the trial on the *False Embassy*), Aeschin. 3 and Dem. 18 (Ctesiphon's trial *On the Crown*), Andoc. 1 and Lys. 6 (Andocides' trial).

8 DH, *De Dem. Dictione* 12–13 compares the narrative to that of Lysias and compliments the construction of characters. Edwards (2004: 344–8) discusses briefly narrative strategies in Dem. 54 and Dem. 19 and relates them to narratological theory.

9 Isocrates 20 (*Against Lochites*) is the second surviving speech but lacks a narrative section. A third is probably Lysias' fragmentary *Against Teisis* (fr. 279 Carey), whose narrative section is quoted by DH, *De Dem. Dict.* 11. On this speech, its (partially preserved) narrative and the legal procedure followed see Spatharas (2006: esp. 58–64). Note that although the legal suit concerns *aikeia*, Ariston's prosecution speech is dominated by the concept *hybris*: there are 26 attestations of the term and its cognates as opposed to only two for *aikeia*. Note also the language of hatred and anger (**6:** ὀργὴ καὶ ἔχθρα; **42**: ἐμίσει, ὀργήν; cf. ἔχθρα: **3**: ὀργή: **19**, **33**). On the combination of the *topoi* on *orgē* and punishment in Dem. 54 and other private speeches (Isocr. 20, [Dem.] 50) where the issues at stake were of public interest see Rubinstein (2004: 192).

10 It is worth noting that this is the only legal suit for which court-fees were not required; see Harrison (1971: 93). Moreover, in a *dikē aikeias* damages were paid to the prosecutor, whereas in a *graphē hybreōs* any fine would be paid to the state.

11 Carey (1989: 93–4); on *anakrisis* and *diaita,* see Kremmydas (2018: 111–12) with references to further literature.

12 Might this be Ἀρίστων Ἀριστοκλέους (II?) Κολλυτεύς (*APF* 2160)? The prosopographical identification is uncertain in the absence of further evidence but there is no doubt that the speaker belongs to an affluent family. Note *i.a.* the reference to his and his family's liturgical and civic-spirited record at **44**.

13 The date of the events described is unclear. Carey (1985: 69) suggests a date in 357 or 343 for events at the military fort of Panactum and 355 or 341 as the likely date of the speech. Panactum was one of the border forts of Attica: see Ober (1985: 152–4).

14 References to the origins of violent episodes that culminated in law court cases and the past relations between the litigants occur in the extant speeches delivered in cases of violence: cf. Lys. 3.6–10, 4.1–3, *Against Teisis* 1.

15 Spintharus, son of Eubulus (**7**), Archebiades (**31,** *APF* 26), Nikeratus (**32**); cf. **44** and n. 12 above. At **14** he represents Conon as having retorted that the youths are the sons of well-off, aristocratic families (καλῶν κἀγαθῶν ἀνδρῶν υἱεῖς).
16 Carey (1985: 81).
17 Whether the *stratēgos* in question was responsible for hoplite troops or the defence of Attica (depending on the interpretation of what φρουρά at **3** means), he might have still been on active duty away from Athens at the time of the trial. Mike Edwards suggests to me, quite intriguingly, that the *stratēgos* might have died by the time of the trial, although one would have expected the speaker to mention this (as speakers tend to do in the case of other Athenian generals, e.g., Isae. 5.42, Dem. 20.80). However, it is likely that the reference to him early on in the narrative was only meant to invest the speaker's story with authority, and thus lend it greater credibility.
18 Although Phanostratus, too, was attacked (**7**), we are not told whether he suffered any wounds. From this point onwards, the focus of the narrative falls solely on the speaker. Similarly, in Lysias' *Against Teisis* the speaker's friend is kicked out of the house where the violence took place (**4**) while the rest of the narrative is devoted to the former's mistreatment.
19 Johnstone (1999: 90 with n. 107) suggests aptly that '[t]he claim to truth, then, was not merely about language accurately representing reality but language assuming the authority of reality' and discusses briefly whether the Athenian courts arrived at truth. Aristotle in his *Rhetoric* (1.15.7, 1375b 5–6) uses the coin-tester as a metaphor for the role of judges: καὶ ὅτι ὥσπερ ἀργυρογνώμων ὁ κριτής ἐστιν, ὅπως διακρίνῃ τὸ κίβδηλον δίκαιον καὶ τὸ ἀληθές. On the affirmation of the truth of litigants' claims through witness statements: Antiph. 3.2.2, 5.1; Lys. 3.20, 6.42, 10.30, 13.42; Dem. 27.28, 29.4; Hyp. 5 (*Athen.*) col. 1, *passim.* This is not the appropriate place to discuss the two main scholarly positions on the role of lawcourts in Classical Athens but the briefest of summaries should suffice: on the one hand, many scholars claim that litigants and *dikastai* were seeking to establish the truth, while on the other, scholars favouring an agonistic model of Athenian administration of justice contend that it was essentially a zero-sum game between competing individuals. For a balanced view of the debate and a brief overview of the Athenian legal system see Lanni (2006: 1–2 and 31–40).
20 **15**: οὐχ ἧττον τοῦτ' ἀγανακτήσαιμ' ἂν καὶ ὑβρίσθαι νομίσαιμι, εἰ οἷόν τ' εἰπεῖν, **εἰ ταῦτ' ἀληθῆ δόξει Κόνων οὑτοσὶ λέγειν περὶ ἡμῶν**, καὶ τοσαύτη τις ἄγνοια παρ' ὑμῖν ἐστιν, ὥσθ', ὁποῖος ἄν τις ἕκαστος εἶναι φῇ ἢ ὁ πλησίον αὐτὸν αἰτιάσηται, τοιοῦτος νομισθήσεται, τοῦ δὲ καθ' ἡμέραν βίου καὶ τῶν ἐπιτηδευμάτων μηδ' ὁτιοῦν ἔσται τοῖς μετρίοις ὄφελος (highlighting mine; I am using the Greek text of Dilts' OCT).
21 Such vocabulary appears mainly before witness statements/testimonies: **9, 12, 29**. Contrast the sparser use of vocabulary relating to lying: **31, 32**, **33** (x2), **37** (all in connection with witness testimony).
22 Note the interesting *gnōmē* used by Ariston at **38**: οἱ γὰρ οἶμαι βέλτιστοι καὶ ἥκιστ' ἂν αὐτοί τι ψευσάμενοι μάλισθ' ὑπὸ τῶν τοιούτων ἐξαπατῶνται· οὐ μὴν ἀλλὰ δεῖ πρὸς τὸν βίον καὶ τὸν τρόπον ἀποβλέποντας πιστεύειν.
23 The opposition's deceptive tactics are also described in **26–7**, **29**.
24 MacDowell (2009: 245).
25 Wolff (2007: 105).
26 Steel (2009: 69).
27 Wolpert and Kapparis (2011:172–3).
28 Carey and Reid (1985: 72).
29 On this legal procedure and its relationship with *dikē aikeias* and *graphē hybreōs* Todd (1993: 269–71, 2007: 281–4) and Griffith-Williams (2013) are good starting points.

Lipsius (1905–15: 123) and Harrison (1971: 103) argued that the procedure for *trauma ek pronoias* was a *dikē*, while Hansen (1983) maintained that both a *graphē* and a *dikē* were available for this offence. Todd (1993: 105) classified it under *dikai,* while in his commentary (2007: 284) accepted the co-existence of *graphē* and a *dikē traumatos ek pronoias*. Finally, Phillips (2007: 93–8) cautiously identified the current case as a *dikē*.

30 Wallace (1989: 97–106). A new type of political procedure (*apophasis*) was assigned to the Areopagus at some point after the middle of the fourth century (Wallace 1989: 113–19 with reference to earlier scholarship). Cases involving sacrilege were also tried by this court.

31 See Plastow in this volume and esp. the discussion of Lys. 3.44-6 on pp. 41, 43.

32 See **38, 42–43**; also Carey (1989: 92); Todd (2007: 282 with n. 32).

33 Once again, there is a long and unexplained time-lag between the alleged offence and prosecution.

34 Carey (1989: 90–1, 95–6).

35 Todd (2007: 285–6).

36 It is needless to stress that such an approach does not seek to simulate the likely reactions and evaluations of fourth-century *dikastai*.

37 E.g., Zuckermann, DePaulo, and Rosenthal (1981); Vrij *et. al.* (2000); Vrij *et al.* (2011); Suchotzki, Crombez, Smulders, Meijer, and Verschuere (2015).

38 The polygraph test is probably the best-known technique but is not uncontroversial. Evidence arising from it is admissible in 'approximately 20 of the state courts and two-thirds of the federal circuits' in the USA (Stockdale and Grubin 2012) but not in several European jurisdictions (e.g., in Germany). Techniques seeking to identify verbal cues to deception include even computer analysis of texts (SCAN in Israel).

39 This method was developed in order to assess the reliability of child witnesses in sexual abuse trials. However, its application has subsequently been extended to adult witnesses, too, and a range of crimes; see e.g., Köhnken (2004: 60).

40 It is used in certain contexts in Germany, Switzerland, Austria, the Netherlands and Sweden (Köhnken 2004: 60). Vrij (2005) evaluates the evidence from 37 studies and concludes that while SVA evaluations are not 'accurate enough to be admitted as "expert scientific evidence" in criminal courts, [it] might be useful in police investigations' especially at their early stages in order to help detectives form an idea of the veracity of various statements.

41 According to the so-called 'Undeutsch hypothesis', the criteria in question are more likely to be present in truthful rather than in fabricated/deceptive statements. Statements based on real events differ in terms of content and quality from fabricated ones; see recent review in Amado, Arce, Fariña (2015).

42 List adapted from Vrij (2015: 8–9).

43 Information is presented in a non-chronological order.

44 See, for example, Vrij 2005 (a detailed review of 37 studies of CBCA). Note also that nos. 13–19 are often not used in assessments.

45 For example, Reality Monitoring (known as RM), despite its similarities to CBCA in terms of the criteria it is using, is still not being used as a veracity assessment tool. On RM see further Vrij (2008: 261–79, 2015: 15–19). Although this approach seeks to discriminate between memories of experienced vs non-experienced events, and therefore between truths and lies, it does not apply to events narrated by the orators in forensic speeches from Classical Athens. Litigants/speakers are not necessarily seeking to make up memories of events that did not happen but rather to tell the stories of real events in a way that would incriminate their adversaries or help exonerate themselves.

46 However, as stated above, this is but one stage of Statement Validity Assessment; preceding the application of CBCA criteria, it is necessary to conduct an interview

with the witness and examine cognitive and other parameters (see Vrij 2008: 204–7). However, only the part of the statement that relates to the offence in question is selected and examined via CBCA.

47 Sporer (1997: 392); Vrij (2008) 109.

48 On the importance of the stakes for the production of cues see, for example, Zuckerman, DePaulo, Rosenthal (1981: 2, 25); DePaulo, Lindsay et. al. (2003: 75, 79, 105); Vrij (2008: esp. 76–87).

49 See discussion of point b) below.

50 It is worth noting here that even witness depositions were prepared by the litigants in advance of the trial.

51 For the scoring of the narratives of the two speeches see the Appendix.

52 See n. 28 above.

53 The two narratives examined in this chapter have been assessed by two coders and intercoder reliability has been established using two different indices (percentage agreement and Krippendorff's alpha [a]), which are the most widely used and flexible indices, respectively. In order to calculate intercoder reliability, the online tool ReCal 2 (http://dfreelon.org/utils/recalfront/recal2/) was used. On ReCal see further Freelon (2010). For further details on intercoder reliability see the Appendix.

54 In both speeches vocabulary related to *hybris* is strongly present and frames the respective narratives, but in Dem. 54 there are 18 attestations, whereas in Lys. 3 there are only seven.

55 See pp. 217–18, this volume, for a list of content criteria.

56 Note that the speaker does not even repeat them, thus stressing the probity of his own *ēthos*.

57 These omissions might, alternatively, be attributed to the fact that these reported exchanges would have made the narratives lengthier, and might have also interrupted the flow of the narrative and made it less memorable.

58 After all, the impression of telling the truth (what one might nowadays call 'truthiness') would have been just as important and effective in Athenian forensic *agōnes*.

59 In a forthcoming publication, I apply CBCA to narratives in Dem. 19 and Aeschin. 2.

60 This is either because the facts had already been established by the prosecutor (cf. Arist. *Rhet.* 3.15.10, 1416b) or a supporting speaker in *synēgoriai* or simply because narrative is interspersed with argumentation and rhetorical questions which disrupt its flow.

61 Todd (1990: 173).

62 A little later on the same page he refers to Dem. 19 and Aeschin. 2, 3, and Dem. 18.

63 C1 and C2 stand for Coder 1 and Coder 2.

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Chapter 14

Greek teachings about forensic narrative[1]

Rosalia Hatzilambrou

Introduction

Theories about narrative lie at the core of modern communication studies. One of the most prominent of these theories asserts that all forms of human communication need to be seen as value-laden narratives, which urge humans to believe or act in certain ways. According to this theory, the ways in which people justify their behaviour have more to do with telling a credible story than with producing evidence or constructing a rational argument.[2] But how to narrate a credible story was a question that had concerned rhetoricians, teachers and authors of rhetorical works in Greek and Roman antiquity, at a time when rhetoric was fundamental to civic life, education and cultural aspiration.

Given the limited space of this chapter, I have chosen to discuss the recommendations of five key classical and postclassical Greek rhetorical texts about forensic *diēgēsis*, products of different cultural, educational and political milieux. Firstly, I consider the relevant passages from the only two extant fourth-century arts of rhetoric: Aristotle's *Rhetoric* (3.16), which represents the philosophical rhetorical theory that derives from an Academic/Peripatetic nexus, and the ps.-Aristotelian *Rhetoric to Alexander* (§§30, 31 and 36.16), which mostly incorporated teachings from a different tradition, the sophistic rhetorical teaching with some obvious links to Isocrates.[3] The next passage to be examined comes from the corpus of Dionysius of Halicarnassus (*Lysias* 18), the first Greek writer on rhetoric for three centuries after Aristotle whose work survives. The relevant chapters from the highly influential (on later Greek, Byzantine and Renaissance students) treatise of Ps.-Hermogenes *On Invention* (2.1–7) are discussed in the following section. Finally, the relatively long account of the so-called *Anonymous Seguerianus* on narration (§§40–142) is the last text discussed in this chapter. Its composition is dated to the late second/early third century AD and seems to incorporate all the significant doctrines on the topic hitherto advanced. Needless to say, my account based on the five selected texts is not complete; but it is certainly indicative of the principles and doctrines that dominated Greek rhetorical teaching on narration in antiquity.[4]

The aim of this article is twofold: firstly, to contribute to the understanding of the rhetorical theory about *diēgēsis* in Greek antiquity, and secondly, to attempt to shed some light on whether the authors of these accounts had estimated the role

that *diēgēsis* played in the success, that is the persuasiveness, of Athenian forensic speeches, texts that formed the necessary background for their rhetorical theories and functioned as models for students of rhetoric, particularly in the classical and imperial eras.

Aristotle *Rhetoric* (3.16)

At the beginning of the first book of his *Rhetoric* (1.1.3) Aristotle specifies that only the proofs (πίστεις) belong to the art, while everything else is accessory (προσθῆκαι). Later (1.1.9), he asserts that instructions are given in irrelevant speaking (ἔξω τοῦ πράγματος) by those 'who define other things such as what the introduction or the narrative should contain, as well as each of the other sections of the speech. For in them, they treat of nothing except how to put the judge into a particular frame of mind'.[5] These then form the principles on which the treatise is organized: the first two books set out the essentials, the material for proof, and once this is done, space is given in the third book to accessory matters, the ones that according to Aristotle are not relevant to the issue of the case at hand (τὸ πρᾶγμα). What is more, some scholars argue that Aristotle's *Rhetoric* was originally two separate works: Books One and Two formed an art of rhetoric, while Book Three was a separate treatise on style.[6] Regardless of this fact, the treatment of *diēgēsis* is placed in the third book. By leaving the treatment of the different sections of a speech for the third book, Aristotle felt free to express his views about what the different sections of the speech should contain, and how each part of the speech should affect the audience's state of mind. In other words, he offered instructions, from his own perspective of course, on aspects of the speech that had earlier been criticized by himself as being irrelevant to the issue. However, Aristotle's instructions are not the main topic of his rhetorical discourse, as they are in the treatises of those he is opposing. Dow has persuasively argued that Aristotle's criticism is perhaps directed to Thrasymachus and other technical writers of the period, who recommended the use of set-pieces from handbooks for emotional arousal, independent of the facts and the strength of the case.[7] Attention to this observation can help resolve an apparent inconsistency.

Another important observation is that the discussion of narration is part of the section of the third book, namely chapters 13–19, that treats arrangement (τάξις). Arrangement is ignored in the discussion of invention in Books One and Two, as if it is of relatively little importance. What is more, at the beginning of the section on arrangement in chapter 13 (3.13.1–2) Aristotle proposes that the necessary parts of a speech are πρόθεσις, that is, the statement of the proposition, and πίστις, the proof of the statement. These are the parts that really belong to every speech. At most, the parts of every speech become four, namely προοίμιον ('proem'), πρόθεσις, πίστις, and ἐπίλογος ('epilogue'). But *diēgēsis* is at least acknowledged to belong to a forensic speech (3.13.3).

In chapter 16, which is devoted to narration, Aristotle treats all three species of oration. As is his usual practice, he begins with epideictic, then considers narrative in forensic speeches, and he ends this chapter with a note on narrative in

deliberative oratory. Forensic *diēgēsis* receives longer treatment than the other two; the forensic section may have been even longer in the original, since something seems to have dropped out of the text at this point.[8] Some of the recommendations for epideictic narrative also apply to forensic stories. Aristotle urges that it should not always be continuous, which by implication[9] is the advice given in rhetorical handbooks concerning forensic oratory, but part-by-part, because it aids memory and clearly demonstrates the facts (ἐνίοτε οὐκ ἐφεξῆς δεῖ διηγεῖσθαι πάντα, ὅτι δυσμνημόνευτον τὸ δεικνύναι οὕτως). It also renders the speech simpler (ἁπλούστερος), not puzzling (οὐ ποικίλος) and plain (λιτός).[10] This means that Aristotle recommends topical over single chronological organization for *diēgēsis* in epideictic speeches,[11] while in forensic speeches he seems to recommend the opposite. He also claims that the speech and the *diēgēsis* have non-artistic ('the speaker being in no way the author of the actions which he relates') and artistic elements, that is, created arguments which show that the action did take place if it was incredible, and interpretation, that the action is of a certain quality or quantity, or all these together. Finally, it is worth mentioning, since it may have some application to forensic speeches as well, that Aristotle recommends that authors should only remind their audiences of well-known actions and not describe them in detail. In this way, narrative emphasizes significance, while the emphasis placed on τὰς γνωρίμους ἀναμιμνήσκειν (3.16.3) underlines narrative as an instrument for demonstrating events that create or strengthen public knowledge.[12]

Moving on to the discussion of forensic narrative (3.16.4), Aristotle criticizes sophistic handbook writers, and in all probability he targets Isocrates and his followers.[13] Narrative must not be long (μακρῶς διηγεῖσθαι), rapid (διήγησιν ταχεῖαν) or concise (συντόμως),[14] as they claim, for propriety (τὸ εὖ) does not consist either in rapidity or conciseness, but in moderation (τὸ μετρίως), that is, saying just enough to be clear and successful, in order to address the issues that follow: that an event has happened, or that injury or wrong has occurred, or that the case is important. It is becoming evident that these recommendations consist of examples of what later came to be known as *staseis*; namely that an event has happened belongs to the type of *stasis* called *stokhasmos*, while injury, wrong and importance are examples of the type of *poiotēs*.[15] By this statement Aristotle acknowledges the potential contribution of narrative to the success, that is, persuasiveness, of a speech, and defines the function of *diēgēsis* within his rhetorical theory. His guidance takes both prosecutor and defendant into account. Apart from the main narrative, Aristotle is conscious of the importance of the 'collateral' *paradiēgēsis* (παραδιηγεῖσθαι). This term could collectively include everything that was allowed to slip into the narrative 'incidentally', certain details of facts and actions that bear on *ēthos* and reveal one's own virtue and an opponent's vice, or anything else that is likely to be agreeable (ἡδέα) to the judges. This very last sentence explicitly shows Aristotle's concern about the effect that each element of each part of the speech has on the speaker's audience.

Next, Aristotle advises that the defendant's narration should be shorter than the prosecutor's in order to avoid repetition, unless something contributes to the defence, or more specifically to the establishment of the issue. Here, the four *staseis* (fact, harm, justice and significance) that had occurred before (16.4) are now repeated under the Aristotelian term ἀμφισβητήσεις ('doubts'), a suitable term when referring to the defendant. In what follows, Aristotle addresses the use of tenses in narration. One should narrate in the past tenses, but switch to present (dramatic) tenses when past events affect present emotions, namely pity (οἶκτος) or indignation (δείνωσις). As an example of the synoptic treatment required in a narrative and the use of past tenses in it, Aristotle adduces the story of Odysseus' wanderings, which in its narration to Alkinous occupies four books of the *Odyssey*, but is condensed into a summary of 55 verses when repeated to Penelope in Book 23.

Additionally, by putting ἠθική at the very beginning of the new paragraph Aristotle emphatically claims that narration should be indicative of moral character (ἦθος). Thus, it is important to pay attention to what narrated facts and actions reveal about moral character. One way is to demonstrate clearly deliberate choice (προαίρεσις). It is by this means that a moral quality is given to a character; and the quality of the moral purpose is determined by the end or purpose (τέλος) that a person has chosen. For this reason, one should appear, for instance, to speak out of virtue and not out of prudent calculation. Moral character is relevant to causation, and thus an important means of creating and supporting plausible argumentation. Thus, a person is advised to reveal individual character peculiarities which function as moral indications, and to offer a cause for one's actions, especially if what one says sounds incredible, or if one has no reason to give. The ability to add a cause is what creates reasonable arguments (ἐνθυμήματα) out of the narration, which aid plausible rhetorical representations.

Moreover, Aristotle suggests that a speaker should speak in his narration of his and his opponent's emotions (τὰ παθητικά), both external known indications but also any special peculiarities of his own or the opponent's (τὰ ἑπόμενα and τὰ προσόντα). These will function as signs (σύμβολα) of character and motive, which will impart fidelity to the narrated facts. The importance of *ēthos* is stressed by another piece of advice at the end of the section on forensic narrative, that a speaker should introduce himself at the beginning (εὐθύς) as being of a certain rhetorical character and his opponent as well, but he has to do it inconspicuously (λανθάνων), in accord with the principle, also expressed elsewhere in the *Rhetoric*, that the best (rhetorical) art is concealed.[16]

In a chapter on arrangement Aristotle concludes his section on forensic narration by offering the advice that *diēgēsis* is not confined to one place, is not continuous, and sometimes should not be placed at the beginning of the speech, which is its proper place. Aristotle has realized that the placement of *diēgēsis* is dynamic, to be determined by the rhetorical situation of each speech.[17]

To sum up, Aristotle's main points in his account of forensic *diēgēsis* are causation together with its key aspect, τὸ μετρίως, the contribution of *diēgēsis* to

stasis-questions, the importance of *ēthos* and *pathos* for both the speaker and his audience, and narrative order. He certainly leaves out of his account many tactics employed by the forensic orators in their speeches, such as factual manipulation, omissions, obfuscations, etc. However, the teaching of such tactics could not have appeared in Aristotle's *Rhetoric*. This is a philosophical work, whose original audience was Aristotle's students who were trained in dialectic and moral philosophy. Aristotle himself brings strong ethical presumptions to the study of rhetoric. This emerges most clearly at 1.1.12, where he argues that the prime function of rhetoric is to prevent truth and justice from being defeated.[18] On these grounds, he reveals a somehow detached attitude towards real-life forensic oratory and logographers who try by every means to win a case. Perhaps indicative of his attitude is the fact that when he discusses aspects of forensic oratory, he does not quote or allude to the text of a single forensic speech.[19]

Rhetoric to Alexander (§§30, 31, 36.16)

The other art of rhetoric that has survived from fourth-century Classical Athens, namely the *Rhetoric to Alexander* ascribed to Anaximenes of Lampsacus, which certainly had made use of pre-existing material from different sources with links mostly to the sophistical tradition,[20] reveals a more pragmatic attitude than the Aristotelian treatise. However, it contains an even shorter and more superficial treatment of forensic *diēgēsis* than the Aristotelian one. Specifically, the treatise devotes only one section to forensic narrative *per se*, with reference again to arrangement (τάξις) in §36.16:

> we shall arrange forensic introductions in the same way as demegoric introductions. By the same reasoning we shall attach reports of facts (ἀπαγγελίαι) to the introduction or demonstrate throughout the parts that the reports are credible and just or make them coherent by themselves.[21]

So, in this treatise no strict rule is put forward regarding the arrangement of the forensic *diēgēsis*, which is not confined to a specific place. Three possible ways of arrangement are recommended, which actually reflect the practice of contemporary practical oratory. Which one is to be employed is determined by the particulars of the facts in each case, namely by their number and their familiarity to the audience.[22] The aforementioned passage refers back to §§30 and 31 of the work, where the construction of public speeches (δημηγορίαι) is discussed. In this work the demegoric genre is the one treated first and receives the longest treatment. A complete account of arrangement for each of the genres would have led to the treatise becoming repetitive, and thus was reasonably enough avoided by its author.

Different terms are used in §§30 and 31 for narratives in demegoric speeches: ἀπαγγέλλειν ἢ ἀναμιμνήσκειν ('report or recall'),[23] μερίζοντας δηλοῦν ('divide into parts and explain'), προλέγειν ('discuss in advance'), which reflect the

chronology of the events to be narrated (previous, current, future events) and aim at terminological precision. Later in the account, apart from ἀπαγγελία, δήλωσις and πρόρρησις, διεξέρχεσθαι ('go through'), ἐξήγησις ('account') and ἐξαγγέλλειν ('report) are employed, while the generic term διηγήσεις appears only once in the epilogue of §31.[24] According to the author of the *Rhetoric to Alexander*, the presence of narration in demegoric speeches is necessary (ἀναγκαῖον ἡμᾶς ἐστιν), and presumably should be so in the forensic ones.[25] The example of narrative employed is a report of an embassy. There, the author of the *Rhetoric to Alexander* deals, but rather superficially, with important principles of narration, by asserting that by reporting purely (καθαρῶς) the speech may gain in importance (μέγεθος), while at the same time light is thrown upon the causation of events (αἰτία).

Traditional rhetorical teaching of the time included the theory of the three virtues of narration.[26] It was associated by Quintilian (4.2.31) with the school of Isocrates,[27] and was criticized in part by Aristotle.[28] The three principles of narration in Anaximenes' account are brevity (βραχέως), clarity (σαφῶς) and credibility (μὴ ἀπίστως).[29] Brevity is conducive to memorability, as clarity is to understanding and plausibility to belief. Practical advice is offered, firstly and more extensively on how to achieve clarity, then brevity and lastly credibility. Clarity should be achieved through words and facts (ἀπὸ τῶν ὀνομάτων ἢ τῶν πραγμάτων).[30] Similarly, brevity is pursued by means of words and facts on the condition that clarity is retained. Finally, credibility is achieved by offering plausible justification for when something unconvincing is being narrated (περὶ τὰς ἀπιθάνους πράξεις αἰτίας φέρωμεν παρ' ἃς εἰκότως τὰ λεγόμενα δόξει πραχθῆναι). I see no reason why the author of the *Rhetoric to Alexander* would not have applied these observations to the composition of the narrative of the forensic speeches as well.

Finally, the arrangement of the exposition of facts in demegoric speeches is discussed in §31. This chapter is the proper account of the τάξις of *diēgēsis* in this work, which is synoptically repeated in §36.16, that is, in the chapter which deals with the arrangement of forensic narrative.[31]

Dionysius of Halicarnassus, *Lysias* 18

§18 of the essay of Dionysius of Halicarnassus on Lysias consists of the text *par excellence* among his critical works discussing *diēgēsis*. This is, of course, chronologically distant from the works of Attic forensic oratory, and indeed the product of a different cultural environment; however, I consider it a key text for this account, because it reflects traditional doctrines which had evolved through generations of scholars since the time of Isocrates and Aristotle. Moreover, it is the first Greek text that acknowledges the significance of *diēgēsis* in an oratorical speech.[32]

The essay on Lysias is part of the extensive work of Dionysius on the Attic orators, a work that was intended as a contribution to the Atticistic movement, current at the time of Dionysius' activities in Rome, by means of a discussion of what was worth imitating in the works of the ancient Greek orators. Dionysius was, of

course, an avowed Atticist. His earliest essay *On Imitation* was intended to be a guide for students in their selection of models, while *On Lysias* which follows abounds in advice to its audience to imitate the many desirable qualities of Lysias. Therefore, the doctrine of imitation (μίμησις) is dominant in his critical essays.[33] In selecting his examples from Lysias, Dionysius follows the Aristotelian tradition,[34] which divided oratory into forensic, deliberative and epideictic (*On Lysias* §16). In his own words:

> Lysias has made his mark in each of these forms, but especially in forensic contests … The student who wishes to make an accurate assessment of Lysias' ability should look for it in his forensic rather in his ceremonial or deliberative speeches.[35]

Therefore, the focus of the examination of the powers of Lysias in the various parts of the speech, namely proem, narrative, proofs and epilogue,[36] is on Lysias' forensic speeches.

In his search for his Attic models, Dionysius developed a genuine scholarly interest in practical oratory, in terms both of style (λέξις) and of subject-matter (πρᾶγμα), which enabled him to estimate the importance of the narration of the facts in the oration, and to express it in the opening of the section on *diēgēsis* in his *On Lysias*. There, he defines the narration of the facts as the section requiring the most thought and care (μέρος πλείστης δεῖται φροντίδος καὶ φυλακῆς). This is the first text, at least among the extant rhetorical works, where the rhetorical importance of *diēgēsis* is underlined; this view is further supported by the treatment of narrative in the essay, which almost equals in length the account of proofs. In dealing with such a demanding part of the speech (an ἰδέα, in Dionysius' terminology), Lysias in the critic's view is unquestionably (ἀναμφιλόγως) the best of all the orators, pronounced to be 'the standard and the model of excellence' (ὅρος τε καὶ κανὼν τῆς ἰδέας ταύτης). Additionally, he admits something very interesting: that the rules given in the arts of rhetoric (τέχναι) that were in circulation for the narrative part of a speech were largely drawn from a study of Lysias. So, Lysias appears to have been established before Dionysius as a model for the forensic *diēgēsis*, at least implicitly. However, the use of the verbs ἡγοῦμαι ('believe'), ἀποφαίνομαι ('pronounce') and οἴομαι ('consider') suggests the significant contribution of Dionysius himself to the establishment of Lysias as the undoubted model for the forensic *diēgēsis*. Moreover, the phrasing of the period referring to the other rhetorical manuals which had something worthwhile to say about narrative, implies that some at least of the *technai* known to Dionysius had nothing worthwhile to say about *diēgēsis*, either because they considered this part rhetorically insignificant, or because they were treating it superficially. If I read correctly between the lines, Dionysius implicitly states that there were no arts of rhetoric which offered a systematic treatment of narration, at least by his standards. If there had been, Dionysius would in all probability have named them, as parallel instances in his work indicate.[37]

Lysias' superiority in the treatment of the *diēgēsis* is justified by the listing of the virtues observed in his narratives, where no distinction is made between narratives of defence and narratives of prosecution. These are τὸ μάλιστα σύντομον καὶ σαφές, τὸ ἡδὺ ὡς οὐχ ἕτεραι καὶ τὸ πιθανόν, τὸ λαθεῖν, ἡ ἀφροδίτη:

> these narratives of his possess the virtues of conciseness and clarity to a high degree: they are moreover singularly agreeable, while their persuasive powers are such that they smuggle conviction unnoticed past the listener's senses. It is thus difficult to find a narrative that appears false and unconvincing, either in whole or in part, such is the persuasive charm of the story as he tells it, and his power to deceive his audience as to whether it is true or fictitious.

The doctrine of virtues of style had been evolved as an evaluation system by scholars from the time of Aristotle.[38] The system of virtues of style that Dionysius employed is mainly set out in his letter to Pompeius Geminus (§§3.16–21) and in his essay on Thucydides (§§22–23).[39] The list of virtues is divided into those which are essential (ἀναγκαῖαι) and those which are ancillary or additional (ἐπίθετοι). Under the former heading, come purity (τὸ καθαρόν), clarity (τὸ σαφές)[40] and brevity (τὸ σύντομον). Under the latter Dionysius includes a number of virtues which fall into the groups of vividness, power of character drawing and emotional representation, grandeur, vigour, charm, persuasiveness and propriety. The 'essential virtues' should be demanded in the work of every prose writer. The 'additional virtues' depend upon the presence of the 'essential virtues' for their effect, but they should not be ignored, for they reveal the power of an orator.

The system of the three main virtues of the narration, namely brevity (τὸ σύντομον), clarity (τὸ σαφές) and credibility (τὸ πιθανόν), which most likely originated in the school of Isocrates, was also employed, apart from in the aforementioned *Rhetoric to Alexander*, by many other extant rhetorical works.[41] The sequence of the three virtues in them is not always the same. The occupation of the first position in the sequence is attested for both brevity and clarity, but the last position among these three is always to the best of my knowledge occupied by credibility, which suggests that the most important of the three and actually the ultimate aim of the *virtutes narrationis* was τὸ πιθανόν, to persuade the hearers of the narrative's veracity, while the two other virtues are means for achieving plausibility.

What is more, the list of Dionysius is supplemented by other virtues, namely τὸ ἡδύ ('pleasant') just before credibility, τὸ λαθεῖν ('to conceal') and ἡ ἀφροδίτη ('beauty'). It is a significant observation that Lysias' apparent artlessness conceals art, and renders his speech more persuasive.[42] ἡδονή was one of the established ancillary (ἐπίθετοι) virtues of style and of narration in particular, discussed in more detail in the treatise by Anonymous Seguerianus (§§99, 101). ἀφροδίτη is an unusual term for a virtue of style.[43] Its meaning is not clear. It is probably coined as such by Dionysius, and together with ἡδονή functions as a complementary virtue of style to χάρις ('charm');[44] this according to Dionysius in §11 is 'the

most important and characteristic virtue of Lysias' style'. Certainly, one cannot claim that Dionysius achieved originality in his evaluation of Lysias' *diēgēsis* by supplementing the traditional list of the three virtues of narration. By expanding his list in this way Dionysius simply attempted to describe Lysias' excellence in the composition of *diēgēsis* as accurately as he could, which was not an easy task. As Dionysius had admitted in §§10 and 11 of *On Lysias*, the quality of Lysias' individual art must be recognized by non-rational felt experience, the criterion of the so-called ἄλογος αἴσθησις, which is developed through personal contact with the author whose work is being criticized, but this should be supplemented by technical analysis.[45]

However, Dionysius did not adduce concrete evidence to prove that Lysias possessed the qualities attributed to his narratives, and nowhere is a Lysianic text subjected to critical analysis. The passages of Lysias appended to the treatise are merely set examples intended to give a general idea of Lysias' art in each of the three species of oratory. As an example of the forensic species Dionysius cites the *Against Diogeiton*, but he does not give a single sentence as commentary on the *diēgēsis* of the speech, cited in §25. Instead Dionysius quotes one line from the *Odyssey* (19.203), in order to praise Lysias' persuasive and deceptive powers. The chapter on the *diēgēsis* ends by advising the students to imitate in their practice the many desirable qualities of Lysias' narrative, a further indication that Dionysius' work as a rhetorician is organized around the pedagogical function.[46]

Reference to Lysias' narrative is also made by Dionysius in §9 of the same essay, when he discusses propriety (τὸ πρέπον) in Lysias' work, the 'most important and crowning virtue of style', according to Dionysius. Propriety is evident in the fact that Lysias varies his style according to the different parts of the speech: 'his introductions have a firm moral tone, his narratives are persuasive and simple (διηγουμένῳ πιθανὴ κἀπερίεργος ἡ λέξις), his proofs are terse and concentrated'.

Ps.-Hermogenes *On Invention* 2.1–7[47]

On Invention was transmitted as part of the Hermogenic Corpus,[48] for it was considered as having been written by Hermogenes of Tarsus in the second half of the second century AD. It was studied by many later Greek, Byzantine and Renaissance students,[49] becoming more influential than Aristotle's *Rhetoric* and other older handbooks.[50] On the question of its authorship scholarly consensus now accepts that this treatise was not written by Hermogenes of Tarsus.[51]

Invention (εὕρεσις) was one of the five functions of the orator in Graeco-Roman rhetorical theory, which listed set themes and provided models that could help speakers in the presentation of subjects and in the composition of arguments. *On Invention* is clearly intended to provide basic and rather formulaic theory to students in schools of rhetoric learning the techniques of declamation (*μελέτη*), the practice of forensic and deliberative speeches in character, that were a dominant aspect of secondary education in Graeco-Roman antiquity.[52] Invention differs in each part of a speech, thus students were taught how to generate (to find)

material for each part of the declamation. The Ps.-Hermogenic treatise discusses invention in three parts of a typical forensic or deliberative speech, namely *prooimion* (introduction), *diēgēsis* (narration) and *kataskeuē* (proof). Narration is the subject of the second book.

Surprisingly enough, at least for the contemporary reader, the author of *On Invention* in the second book pays relatively little heed to actual narration, while he gives special attention to what he calls *prokatastasis* or *prodiēgēsis*, the opening statement of the narration. Eight pages on the *prokatastasis* are followed by four and a half pages on narration proper in Kennedy's edition. The reason for the apparent disproportion is made clear in the introductory chapter: 'the *diēgēsis* of every problem is (a statement of) the action itself from which the hypothesis has been constructed. As a result, it is not difficult to invent a *diēgēsis*'. In declamation the narration is almost identical to the *zētēma* or *problēma*, the problem as assigned by the propounder of a subject for declamation. Thus, there seemed more scope for artistic invention in introducing a narration, that is, by composing the *prokatastasis*, than in composing the narration itself. The employment of *prokatastasis* is considered indispensable for, in our author's words, 'it is inartistic and simplistic for the *diēgēsis* to begin directly with what is stated in the problem', and because one should 'not enter on the subject without giving it a head (ἀκέφαλος)'. Thus, the 'head' should provide some background for the narration, such as looking back to past actions and drawing on a historical record that help to explain present circumstances, and therefore are useful for the evaluation to be made in this case. If past actions would not be beneficial to the case, the student is advised to make use of the figure of *paraleipsis* (2.5).[53] In chapters 2–6 the author of the treatise considers the invention of the *prokatastasis* in five categories of declamation, three of the deliberative and two of the forensic species, which are treated from the perspective of both the speaker who defends (confirmation) and the one who attacks (refutation) the proposition introduced in the problem. These are: 'On emigrations and invention in declamation about them', 'On proposals about laws', 'On war and peace', 'On impiety and homicide' and 'On wrongs to the state'. Within these chapters the first period of the narrative is sometimes provided as an example of smooth transition from *prokatastasis* to *diēgēsis*.

The treatment of the actual *diēgēsis* by the author of *On Invention* radically differs from earlier discussions of the subject. It omits much traditional teaching material, as for instance how to achieve the three virtues of narration, namely brevity, clarity and persuasion. The theory of Ps.-Hermogenes on the *diēgēsis* consists of three parts: a) the ways whereby a *diēgēsis* should be amplified (πλατύνεσθαι) on an elementary and formulaic level; b) the *tropoi* of the narration; c) its *akmē*. Thus, he recommends that each of the things said should be extended in three or four phrases (*kōla*) or often continued even further, since there is no stated limit to the extent of the *diēgēsis*, as there is of the *prooimion*. He mentions some ways by which the *diēgēsis* could be lengthened, namely by the style of expression (ἑρμηνεία), by looking for omissions, by describing the cause (αἰτία)

of the facts, and by offering calculations (λογισμοί); that is, by adding to the expression, and by expanding the contents of the subject matter.

The amplification of the *diēgēsis* is a necessary precondition for arriving at the *akmē* of the narration, that is the peak of the *diēgēsis*,[54] which cannot occur within the limits of a single *kōlon*. It occurs, according to our text, 'in three ways which could be combined: either when the action, or the evaluation of the speaker (ἀξίωσις),[55] or the cause of the ἀξίωσις is stated repeatedly in different and varied *kōla*'.

Finally, Ps.-Hermogenes distinguishes for the first time three manners or modes (τρόποι) of narration: simple (ἁπλοῦς), argued (ἐγκατάσκευος) and highly developed (ἐνδιάσκευος).[56] Which one is to be used is determined by the quality and quantity of the facts. Thus, when the facts are numerous, against the opponent and supportive of the speaker's case, the simple *diēgēsis* should be opted for. If the *diēgēsis* is short and somewhat obscure (πολιτική),[57] the argued manner should be employed, and the facts should be strengthened by causes. If the *diēgēsis* is short and clear enough (φαιδροτέρα), then the highly developed manner is recommended, which is achieved through the use of rhetorical figures. The tripartite distinction of modes is illustrated by the provision of three examples from the Demosthenic corpus. The three aforementioned manners of narration roughly correspond to the traditional division into three *genera dicendi* (χαρακτῆρες τῆς λέξεως), the plain, middle and grand styles.[58] The author of *On Invention* concludes that most *diēgēseis* fall under these manners of treatment; thus, some are simple, some argued and some highly developed.

Anonymous Seguerianus (§§40–142)[59]

The rhetorical treatise known as *Anonymous Seguerianus* seems to have been composed by a student or local teacher who put together, sometimes rather clumsily, the views on invention and arrangement of certain earlier rhetoricians, considered to be authoritative in his time. The date of the composition can only be said to be later than the writings of Alexander son of Numenius, Neocles, Harpocration and Zeno, who are often named, especially the first two, by the author as sources. A date at the end of the second century or near the beginning of the third was considered the most likely by Kennedy, the last editor and translator of the treatise into English. The account of the *diēgēsis* in this text amounts to 102 small paragraphs. It is addressed to students of declamation, and seems to summarize what the author views as the most influential and useful doctrines about narration hitherto advanced. Although interested in many theoretical issues and rhetorical debates about invention and arrangement of narrative in the early empire, the author of the treatise normally furnishes his account with good examples from classical, mostly forensic oratory.

The account of narration begins with practical advice on the invention of the beginning of the narrative in speeches dealing with litigation with relatives, and speeches delivered by a *sunēgoros*. Recommendations are provided

for accommodating the *topos* of age, and for responding to prejudicial attacks (διαβολαί) (§§40–5). In §§46–52 the definitions of narration available in the sources of our author are cited, which reflect scholarly disputes of the time, for instance, whether narration of the present and future circumstances exists. The ensuing paragraphs (§§53–62) present the species of narration, which are the true and the fictitious narration, that is, the one delivered in court and the one composed for its own sake, respectively. These are followed by discussion of their subspecies, for instance the narrations addressed to judges are further (and rather scholastically) divided into *paradiēgēseis* ('narrations outside the facts of the case') and *antidiēgēseis* ('counter-narrations'), then *paradiēgēseis* are further divided into *prodiēgēsis*, *paradiēgēseis* and *epidiēgēseis*, depending on their placing with respect to the (main) narration of the facts. Finally, the difference is set out between *paradiēgēsis* and *parekbasis* ('digression').[60]

In §§63–98 the traditional doctrine about the three virtues of narration is presented unchallenged, namely brevity, clarity and persuasiveness (in this sequence); this is the best discussion of the virtues of the narration among later Greek writers. Recommendations are offered on how to secure each of them both in the facts (ἐν τοῖς πράγμασι) and in the choice of words (ἐν ταῖς λέξεσι) of a speech. Some of them are pretty elementary and formulaic, for instance regarding brevity one piece of advice says 'choose synonyms with fewer syllables, for example, ξίφος instead of μάχαιρα'. More interesting and complete, but rather superficial, appears the discussion about persuasiveness, which is secured by the detailed and non-contradictory narration of all its parts (μόρια διηγήσεως) which are the following: person, thing, place, manner, time and cause. Persuasiveness is also created by treating *ēthos*, *pathos* and *enargeia*[61] effectively, and by concealing one's art.[62] §§98 and 99 advise on how to achieve a pleasant (ἡδεῖα) and grand (μεγαλοπρεπής) narration respectively. Then, two more virtues of narration are cursorily presented, namely amplification (αὔξησις) and mildness or fairness (προσήνεια ἤτοι ἐπιείκεια), as well as the objections of some rhetoricians to the importance assigned to the three established virtues.[63] In *Anonymous Seguerianus* each virtue of narration is treated separately, and no need is felt for discussing the way in which all these different and sometimes opposite recommendations on how to achieve each of the virtues could work in practice.

In §§105–11 the *tropes* of narration are very briefly presented; these are: amplification (αὔξησις), diminution (μείωσις), euphemism (εὐφημία), omission (παράλειψις), reminder (ἐπανάμνησις), speaking to the greater or to the lesser (ἐπὶ τὸ κρεῖττον ἢ χεῖρον φράσις) and vividness (ἐνάργεια). However, this short account of the *tropes* of the *diēgēsis* itself achieves the virtue of brevity but not that of clarity. For instance, the difference, if there is one, between 'amplification' and 'speaking to the greater' is not explained.[64] In the remaining paragraphs of the chapter on narration a series of mostly theoretical issues is addressed. These include the difference between the terms κατάστασις and διήγησις, whether a narration should always be included (εἰ ἀεὶ διηγητέον), the proper place for the narration in the speech, whether the narration should be divided or kept together (εἰ ἓν

σῶμα ποιητέον ἢ μεριστέον αὐτὴν εἰς πολλά),[65] and whether on one and the same question (ζήτημα), there is one *diēgēsis* or many. Finally (§§136–42), the style (ἑρμηνεία) and the delivery (ὑπόκρισις) of the narration are briefly discussed. Both should be appropriate to the occasion of the subject (πρὸς τὸν καιρὸν τῶν πραγμάτων), that is, one should make the style accord with the account: whether it requires forcefulness (δείνωσις), or is ethical (ἠθικός), or emotional (παθητικός), or argumentative (κατασκευαστικός).

Concluding observations

Regarding the teaching of forensic narrative in classical and postclassical Greek antiquity as reflected in the five aforementioned texts, the following observations may be made:

a) The rhetorical importance of *diēgēsis* was under-appreciated, both by fourth-century and later Greek rhetoricians. Aristotle considered it an accessory, non-essential part of the speech, thus he discussed it relatively briefly in the third book in his chapter on τάξις (arrangement), and not in that on εὕρεσις (invention). Its treatment by the *Rhetoric to Alexander*, a rhetorical work strongly orientated towards practice with links to the (non-Aristotelian) sophistic tradition, was more superficial. Later in the Imperial era, when *diēgēsis* was taught and discussed as part of declamation, it was somehow considered almost identical to the problem as assigned by the teacher, something that the student can develop but is not expected to invent. Thus, the rhetoricians gave a secondary role to *diēgēsis* in their rhetorical discourse.
b) In the fourth century BC a theoretical system that applied to *diēgēsis* was already being established, and formed an obvious framework for the work of contemporary and later rhetoricians. Some part of this system was in all probability developed by Isocrates and his school,[66] the dominant rhetorical institution in classical Athens for more than 20 years. The doctrines of the three main virtues of narration, of the distinction between *pragmatikos* and *lektikos topos*, are very likely Isocratean, and proved very influential for later rhetoricians. We would have known for sure if Isocrates' rhetorical writings (if there were any such) had been extant. Aristotle's treatment of narration in the third book of his *Rhetoric* has also been influenced by the Isocratean teaching as far as the structure of the chapter is concerned,[67] while some Aristotelian precepts, like the emotive and ethical aspect of narration, had contributed to the theoretical system that was being established. Other sophists of the late fifth and early fourth centuries BC must have contributed to the establishment of aspects of this system, as for instance Theodorus of Byzantium, who together with his followers is condemned by Aristotle for the many divisions of *diēgēsis*. The classification of tropes and figures to which grammarians contributed appears to have had some impact on the development of aspects of the theory about the composition of narration.

c) As is usually the case, the development of a powerful core theory functions as an impediment to further progress. Greek rhetoricians, at least until the end of the third century AD, felt obliged to work within, or at least to acknowledge, an already established system. Thus, the attested novelties are few, as for instance the theory of the amplification of *diēgēsis* put forward by Ps.-Hermogenes, and are less insightful than precepts advanced by (the relatively early) Aristotle. The latter's points about the artistic and inartistic element of the parts of the speech, the importance of *ēthos*, *pathos* and *enargeia* in narration, causation and *staseis*-questions, and moderation as a central principle of style in narrative which presupposes a judgement specific to each particular situation, all bear the mark of his philosophical reasoning, and suggest that for Aristotle the composition of each part of the speech could be achieved through faculty, and not by applying a prescribed calculus. But Isocrates, too, in *Against the Sophists* (§§12–17) argues against the notion of a τεταγμένη τέχνη, that is, of an art with fixed prescriptive and mechanical rules, and advances instead the notion of discourse production as a creative process.[68]

d) Both because *diēgēsis* was underestimated as a rhetorical part not particularly receptive to invention, and because a powerful theoretical system was gradually established, especially with the development of oratory into declamation, the treatment of *diēgēsis* in the teachings of many rhetoricians ended up as a formulaic, almost mechanical procedure of applying to the narrative of the speeches conventional rhetorical analysis, and of discussing technical minutiae. Topics to be addressed were more or less standardized, and included the placing of *diēgēsis* within the speech, division into parts, organization (topical or single chronological), virtues and *tropoi* regarding both the *pragmatikos* and *lektikos topos*, since style is normally treated separately from subject-matter. Even Aristotle, whose rhetorical work, as we have seen, provides insights that anticipate narrative theory and criticism in the following centuries up to our time, did not present a complete and systematic treatment of *diēgēsis*. He merely sketched out his views on this part of the speech but, I would say, with little enthusiasm or intellectual commitment.

e) In these five texts one does not find an extensive and thorough account of how narratives contribute to persuasion and affect their audience's decision making. Topics such as the way of composing *diēgēsis* as a means of generating emotions, of highlighting one's *ēthos*, of building a conceptual frame familiar to the audience, of using political and social norms effectively, of concealing the manipulation of time and of facts, are either absent or merely hinted at superficially and in a cursory manner. The dynamic relation of narrative to the proofs is never really analyzed. Understanding of the rhetorical significance of the *diēgēsis* was hampered by the lack of a holistic approach to the study and teaching of a speech by the ancient rhetoricians, who traditionally preferred to study narration separately from the proofs. Thus, either the multi-level function of the narrative had not been fully realized, or to the extent that it had been understood could not have been easily taught or

demonstrated. Moreover, the rhetoricians' individual literary and philosophical attitudes discouraged them from including in their works a more pragmatic account of *diēgēsis*. A prime example is Aristotle's moralistic attitude, often expressed in his *Rhetoric*.[69]

I really wonder, in conclusion, what the old masters of forensic *diēgēsis*, Lysias or even Isaeus, had taught about narration.[70]

Notes

1 My thanks are due to Prof. M. Edwards and Prof. D. Spatharas for reading a draft of this chapter. I also thank the Special Account for Research Grants of the National and Kapodistrian University of Athens for its financial support.
2 See Fisher (1987).
3 Aristotle's *Rhetoric* is explored first. The relative dating of the *Rhetoric* and the *Rhetoric to Alexander* is a question which has not been settled; see Chiron (2011: 236–62). On these traditions in classical rhetoric, and especially on the Aristotelian tradition, see Solmsen (1941: 35–50 and 169–90).
4 Parallel texts in Latin include: Cicero, *De inventione* 1.27–30, *De oratore* 2.326–30; *Rhetorica ad Herennium* 2.8.12–16; Quintilian, *Institutio Oratoria* 4.2. Worth reading also is the Greek text by Apsines, *Art of Rhetoric* (3.1–29). On rhetorical theories about *narration* generally, see Volkmann ([2]1885: 148–64; Martin (1974: 75–89); Lausberg (1998: 136–60, §§289–347); Calboli Montefusco (1988: 33–77).
5 Translation is by Kennedy (1991).
6 See, for instance, Kennedy (1963: 103); Fortenbaugh (1991: 152).
7 Dow (2015: 108–27).
8 At the end of 3.16.3, where there is an abrupt transition from the epideictic to forensic species.
9 Indicated by the μέν *solitarium* at the beginning of chapter 16.
10 For the use of λιτός as a stylistic term in earlier and later texts see Cope (1877: 188).
11 See Burkett (2011: 367).
12 See Burkett (2011: 370).
13 See Cope (1877: 189); Kennedy (1991: 270 n. 218).
14 On conciseness established since the classical period as a virtue of narration see p. 235, this volume. Aristotle uses concise as a synonym for rapid.
15 See Cope (1877: 190); Burkett (2011: 374). *Stasis* is the main question that the judges are invited to ask, which pinpoints the object of a legal dispute. *Stasis* is the basic resource for *invention*. For an overview of *stasis*-theory see for instance Russell (1983: 40–73); Kennedy (1983: 73–86); Calboli Montefusco (1986); Heath (1995).
16 *Rhetoric* 3.2.5. On this principle see further van Wyk Cronjé (1993: 55–64).
17 See Burkett (2011: 384).
18 On this, see also Engberg-Pedersen (1996).
19 See also Trevett 1996: (371–79).
20 For a balanced assessment of the origins of the material incorporated into this treatise, see Chiron (2010: 98–101, 2011: 243–6, and 2012: lx–lxxv). See also Mirhady (2011b: 293–304), who advances the existence of a common urtext of the two treatises. Patillon (1997a: 104–25) has argued that the *Rhetoric to Alexander* in its present form was the product of the combination of two parts/traditions: the first, the Theodecteia? (chapters 1–27), comes close to Aristotle's *Rhetoric*, the second, the Coraxian (chapters 28–38), consists of the most ancient tradition.

21 Translation by Mirhady from the Loeb edition (2011a).
22 A view shared with Aristotle, see p. 233.
23 ἀναμιμνῄσκειν is employed for the narration of known past actions, ἀπαγγέλλειν for unknown ones, as for instance an embassy, see Chiron (2012: 79 n. 517).
24 Καὶ τὰς μὲν διηγήσεις ἐπὶ τοῖς προοιμίοις ὡς δεῖ τάττειν, οὕτως εἰσόμεθα ('In this way we shall know how to arrange the narrations in relation to the introductions').
25 As we have seen in the Aristotelian *Rhetoric* (3.13), narration is not considered necessary outside forensic oratory.
26 See Lausberg (1998: 140–56, §§293–334).
27 On the preferential links of the *Rhetoric to Alexander* with Isocrates, see Chiron (2011: *passim*).
28 See *Rhetoric* 3.16.4, and pp. 232–3.
29 Clarity is cited first in the epilogue of §30: συλλήβδην δὲ τὰς ἀπαγγελίας καὶ τὰς δηλώσεις καὶ τὰς προρρήσεις ἐξ ἁπάντων τῶν εἰρημένων σαφεῖς καὶ βραχείας καὶ οὐκ ἀπίστους ποιήσομεν ('In sum, we shall make our reports, explanations, and advance discussions clear, brief, and credible from what has been said').
30 This remark recalls the distinction between πραγματικὸς and λεκτικὸς τόπος in Isocrates' theory; see Walker (2011: 49, 122–53).
31 For a comparison of the accounts of arrangement of *diēgēsis* in the *Rhetoric to Alexander* and Aristotle's *Rhetoric*, see Mirhady (2011b: 298–300).
32 The significance of the text is tacitly acknowledged by Syrianus in the fifth century, who quoted most of it in his commentary on Hermogenes' *On Ideas* (pp. 24–26, ed. H. Rabe) with reference to narration.
33 On *mimēsis*, see the acute observations by Russell (1979: 1–16, and notes). On the way this doctrine was realized in Dionysius' rhetorical works; see Walker (2011: 215–84, esp. 247–62).
34 Arist. *Rhet*. 1.3.3.
35 *Lysias* 16. All translations of Dionysian texts are from the Loeb edition by Usher (1974), sometimes with slight modifications.
36 The rigid four-part division of the speech is ascribed by Dionysius (*Lysias* 16) to Isocrates and his followers. See also Walker (2011: 136–50).
37 Cf. *On Lysias* §§6, 14, 16.
38 On this system of evaluation, which forms the obvious framework in Dionysius' *Lysias*, see the brief account by Bonner (1939: 15–24) and van Wyk Cronjé (1986: 136–41).
39 Cf. also DH, *On Demosthenes* 34.
40 Clarity was the only virtue of style recognized by Aristotle (*Rhet.* 3.2.1).
41 See p. 235.
42 See p. 233.
43 For its metaphorical use as a rhetorical term see Lockwood (1937: 196).
44 Used twice more in *Lysias* §11 among Dionysius' works: ἐὰν δὲ μηδεμίαν ἡδονὴν μηδὲ ἀφροδίτην ὁ τῆς λέξεως χαρακτὴρ ἔχῃ, δυσωπῶ καὶ ὑποπτεύω μήποτ' οὐ Λυσίου ὁ λόγος καὶ οὐκ ἔτι βιάζομαι τὴν ἄλογον αἴσθησιν ('But if the style is devoid of grace and beauty, I view the speech with a jaundiced and suspicious eye, and conclude that it could never be by Lysias'), and τὸ δ' ἡδέως καὶ κεχαρισμένως καὶ ἐπαφροδίτως Λυσίᾳ ('but grace, charm, and beauty are peculiar to Lysias').
45 See Bonner (1939: 47–8); Damon (1991: 42–58).
46 On Dionysius' pedagogical approach, see Walker (2011: 223–31).
47 For *fontes*, *similia* and *imitationes* to this text, one should refer to the detailed notes in the edition of Patillon (2012a).
48 Five treatises make up the Hermogenic Corpus, which became well known as 'Hermogenes' Art of Rhetoric': *On Issues*, *On Types of Style*, *Progymnasmata*, *On*

Invention, and *On Method of Forceful Speaking*. Only the first two are likely to be the work of Hermogenes of Tarsus.

49 Indication of this is provided by the scholia written on the *On Invention* amounting to more than a hundred pages in the edition of Patillon (2012b). Cf. also the synopsis of Hermogenes composed by Michael Psellos in the 11th century (ed. by Walker 2001), where much more space is devoted to the ps.-Hermogenic treatise *On Invention* than to the genuine Hermogenic treatises *On Issues* or *On Types of Style*.

50 See Kennedy (2005: xiii).

51 Heath (1998: 89–111) has argued that its author might be Apsines of Gadara, a famous rhetorician of the mid-third century, while the handbook traditionally ascribed to Apsines may have been written by Aspasius of Tyre, a student of Apsines. Patillon (1997b: 2079–83, 2012a: xi–xv) has proposed Aspasius of Ravenna, another famous rhetorician of the mid-third century as the likely author of *On Invention*, while Kennedy (2005: xvi) concludes that it does not seem possible to identify the author of this treatise with any certainty. He adds that *On Invention* 'might be based to a considerable extent on a work of the mid-second century, through largely written in the third or even fourth century, and revised into its present form in the fifth or sixth century, when it was selected to fill out the Hermogenic *Art of Rhetoric*'.

52 See Kennedy (2005: xvi–xvii). The standard work on Greek declamation is Russell (1983). On the educational use of declamation, 'the crowning achievement of the student of rhetoric' (Cribiore 2001: 223), see also Cribiore (2001: 220–44).

53 On this figure, see Lausberg (1998: 392–4, §§880, 882–6).

54 On the meaning of *akmē* in this context, see Patillon (1997: 2097–8 and 2012a: 156). Also, Rutherford (1998: 105–12), who gives the definition of *akmē* in *On Invention* as follows: 'ἀκμή is a sort of culminating effort associated with the heat of the debate (163.3), with amplifying the language (162.22, 191.3), with the impetus of the speaker which makes the audience rise (189.9ff.)'.

55 Ἀξίωσις is defined by Kennedy (2005: 9 n. 9) as 'the decision the speaker has made as a result of the facts he recounts'.

56 Ps.-Hermogenes devotes a separate chapter (3.15) to the treatment of *diaskeuē*. On *diaskeuē*, which is the artistic development of a passage, see also Patillon (1997b: 2107–10) and Webb (2009: 71–2).

57 I have translated πολιτικὴ (διήγησις) as 'obscure', for it is clearly the antonym to φαιδροτέρα ('clear') διήγησις.

58 On the theory of the three *genera dicendi*, see Lausberg (1998: 471–8, §§1078–82).

59 For sources and similar texts, one should refer to the detailed notes in the edition of Patillon (2005).

60 The division and distinction of narration into many parts by the followers of the rhetorician Theodorus is condemned by Aristotle (*Rhet.* 3.13.5).

61 On *enargeia*, defined as 'speech bringing what is being explained before the eyes', cf. DH, *Lysias* 7, and see Webb (2009: *passim*, esp. 87–106).

62 The concepts of *ēthos* and *pathos* are ultimately derived from Aristotle (*Rhet*. 2.11, *Nic. Eth*. 2.5), see p. 237.

63 Starting with Aristotle's known objection to rapidity as a virtue of narration (*Rhet*. 3.16.4).

64 For no examples are given for explaining 'speaking to the greater' and 'speaking to the lesser', I suspect that these last two *tropes* could have originated as glosses to αὔξησις and μείωσις at some point in the tradition of the source text of *Anonymous Seguerianus*, and were later inserted into the text. Among the cited *tropes* euphemism is the only other one which is not explained through an example, but the meaning of this term was probably considered self-evident.

65 On these topics see pp. 234–5.

66 On the rhetorical teachings of Isocrates, see Walker (2011: 57–90).
67 See Solmsen (1941: 46).
68 See also Walker (2011: 62).
69 See p. 234.
70 On the rhetorical teachings of Lysias and Isaeus, see Cicero, *Brutus* 48 and Ps.-Plutarch, *Lives of the Ten Orators* 839f, respectively.

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